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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 281

ALUMINUM COMPANY OF AMERICA, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FILED AUGUST 2, 1937.

SUPREME COURT OF THE UNITED STATES

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IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

November Term, 1912

In Equity. No. 159

UNITED STATES OF AMERICA

v.

ALUMINUM COMPANY OF AMERIICA

DOCKET ENTRIES

May 16, 1912. Bill filed.

May 16, 1912. Subpœna issued returnable to the first Monday of July next.

May 17, 1912. Writ returned endorsed as follows: "United States of America, Western District of Penna. ss: I hereby certify and return that I served the annexed Chancery Subpœna and Petition in Equity on the thereinnamed Aluminum Company of America, by handing to and leaving a true and attested copy thereof with Arthur V. Davis, President of said Aluminum Company of America, personally at Pittsburgh in said District on the 16th day of May A. D. 1912. E. Hadsell Porter, U. S. Marshal, By. W. G. Dick, Deputy."

June 1, 1912. Answer filed.

[fol. 2] June 7, 1912. Decree filed and entered.

(Here follows a complete copy of the Consent Decree.)

Oct. 25, 1922. Petition of deft. for modification of decree filed.

Oct. 25, 1922. Supplemental Decree (by consent) filed and entered.

April 29, 1937. Petition of Aluminum Co. of America for restraining order filed.

April 29, 1937. Order filed and entered making Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Special Assistant to Attorney General, Walter L. Rice, Special Assistant to Attorney General, John W. Aiken, Special Assistant to

Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, U. S. Attorney, party defendants to above-entitled suit; granting a restraining order returnable May 7, 1937, at 9 A. M., E. S. T.: bond in sum of $50,000 to be given by Aluminum Co. of America.

April 29, 1937. Bond of Aluminum Co. of America in sum of $50,000 with Fidelity & Casualty Co. as surety approved and filed.

April 30, 1937. Affidavit of service filed showing that copy of petition and restraining order were left with Mary W. Tuttle, Chief Clerk in the office of the District Attorney.

May 4, 1937. Subpœna returned served with Bill of com-[fol. 3] plaint and Order on Wendell Berge, Special Assistant to the Attorney General of the United States, on April 30, 1937. (The words "certified copy of petition of April 29, 1937" should have been used in Marshal's return instead of "bill of complaint" in this and the following six returns of service.

May 4, 1937. Subpœna returned served with Bill of Complaint and Order on Robert H. Jackson, Assistant Attorney General of the United States, on April 30, 1937.

May 4, 1937. Subpœna returned served with bill of complaint and Order on N. A. Townsend, Jr., on April 30, 1937.

May 4, 1937. Subpœna returned served with bill of complaint and Order on Walter L. Rice, Special Assistant to the Attorney General, on April 30, 1937.

May 4, 1937. Subpœna returned served with bill of complaint and Order on Homer S. Cummings, Attorney General of the United States, on April 30, 1937.

May 4, 1937. Subpœna returned served with bill of complaint and Order on F. Gwyn Harper, Jr., Special Attorney, on April 30, 1937.

May 4, 1937. Subpœna returned served with bill of complaint and Order on John W. Aiken, Special Assistant to the Attorney General, on May 1st, 1937.

May 5, 1937. Subpœna returned served with certified copy of order and certified copy of petition, on Lamar [fol. 4] Hardy, United States Attorney, at New York, N. Y., on May 3, 1937.

May 6, 1937. Special appearance of Robert H. Jackson, Assistant Attorney General, and Walter L. Rice, Special

Assistant to the Attorney General, for Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, U. S. Attorney.

May 7, 1937. Hearing on restraining Order and motion to quash service before Gibson, J.

May 7, 1937. Motion to quash service, set aside return, dismiss defendant's petition and vacate restraining order filed.

May 7, 1937. Trial memo filed.

May 7, 1937. Order of Court filed and entered directing that the temporary restraining Order granted on April 29, 1937, be and it is hereby continued in force for ten days from date of this Order.

May 14, 1937. Order filed and entered refusing motion of Robert H. Jackson, Assistant Attorney General, and Walter L. Rice, Special Assistant to the Attorney General, to dismiss defendant's petition and vacate restraining order; exception noted to petitioners and bill sealed.

May 14, 1937. Findings of fact, conclusions of law and [fol. 5] opinion filed, directing that preliminary injunction issue.

May 14, 1937. Preliminary injunction issued against Homer S. Cummings, Attorney General of the United States, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Special Assistant to the Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, W. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney for the Southern District of New York, restraining them from proceeding in any way in the suit instituted in the District Court of the United States for the Southern District of New York at No. 85-73 against the Aluminum Company of America or any of its 100% subsidiaries; bond to be given by the Aluminum Company in the sum of $50,000.00.

May 14, 1937. Bond in the sum of $50,000 approved by the Court and filed (Fidelity and Casualty Co. of N. Y.).

May 15, 1937. Affidavit of service, showing service of Preliminary Injunction on Mary Tuttle, Chief Deputy in the District Attorney's office, and filed.

May 18 ,1937. Return of service of John J. Kelley, United States Marshal, for the Southern District of New York, showing service of certified copy of preliminary injunction on Lamar Hardy, United States District Attorney for the Southern District of New York.

[fol. 5a] May 18, 1937. Return of service of Harry C. Allen, Deputy United States Marshal for the District of Columbia, showing service of certified copy of preliminary injunction on Wendell Berge, Special Assistant to the Attorney General of the United States on May 15, 1937; served on F. Gwyn Harper, Jr., Special Attorney, on May 15, 1937; served on N. A. Townsend, Jr., Special Attorney on May 15, 1937; served on Walter L. Rice, Special Assistant to the Attorney General, of the United States, on May 15, 1937; served on Homer S. Cummings, Attorney General of the United States, by leaving certified copy of preliminary injpunction with Golden W. Bell, Assistant Solicitor General of the Department of Justice on May 15, 1937.

May 20, 1937. Subpœna, certified copy of petition and order returned N. E. I. as to John W. Aiken, Hickory, N. C.

May 21, 1937. Return of service of Harry C. Allen, Deputy Marshal for the District of Columbia, filed, showing service of certified copy of preliminary injunction on John W. Aiken, Special Assistant, on May 18, 1937; certified copy of preliminary injunction served on Robert H. Jackson, Assistant Attorney General, on May 20, 1937.

June 3, 1937. Answer of Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. [fol. 5b] Townsend, Jr., former Special Attorney, and Lamar Hardy, United States Attorney for the Southern District of New York, to petition filed by Aluminum Company of America.

June 8, 1937. Expediting Certificate of the Attorney General of the United States filed.

June 8, 1937. Certified copy of Expediting Certificate mailed to Hon. Joseph Buffington, Hon. J. Whitaker Thomp-

son, Hon. J. Warren Davis, Hon. Victor B. Woolley, and Hon. John Biggs, Jr.

June 16, 1937. Certified copy of order of Expediting Certificate directing that record be sent to the Clerk of the Circuit Court received and filed.

[fol. 5c] Continuation of Docket Entries (As Made by Wm. P. Rowland, Clerk of Special Expedition Court)

June 14, 1937. Hearing on Attorney General's Application for the creation of a Special Expedition Court and the fixing of an early hearing thereby, Coram: Buffington, Thompson and Biggs, JJ.

June 14, 1937. Order Designating Circuit Judges Davis, Thompson and Biggs to comprise the Special Expedition Court, fixing June 23rd for hearing, etc., filed.

June 18, 1937. Record received from Clerk of U. S. District Court for Western District of Pa.

June 23, 1937. Argued at Trenton, JJ., Coram: Davis, Thompson and Biggs, JJ.

June 23, 1937. Objection of Aluminum Co. of America to creation of a special expediting court at this time, filed.

June 23, 1937. Printed copies of Record, filed.

June 23, 1937. Brief of Aluminum Co. of Amer., in support of final injunction, filed.

June 23, 1937. Copy of Aluminum Company's petition in Pittsburgh case filed.

June 23, 1937. Letters comprising Aluminum Company's Exhibit No. I, filed.

June 23, 1937. Brief of the United States in opposition to final injunction filed.

June 23, 1937. Copies of United States petition in the New York case, filed.

June 23, 1937. Copy of Aluminum Co. of America's Answer in New York case, filed.

June 23, 1937. Copy of Answer of Andrew W. Mellon in New York case, filed.

June 23, 1937. Copy of Answer of Ailsa Mellon Bruce in New York case, filed.

June 23, 1937. Copy of Answer of David K. E. Bruce in New York case, filed.

June 23, 1937. Copy of Answer of Aloxite Corp. in New York case, filed.

June 23, 1937. Copy of Answer of Coalesced Company in New York case, filed.

June 23, 1937. Copy of Answer of Richard K. Mellon in New York case, filed.

June 23, 1937. Copy of Answer of Sarah Mellon Scaife in New York case, filed.

June 23, 1937. Copy of Answer of Paul Mellon in New York case, filed.

June 23, 1937. Copy of Answer of Union Trust Co. of Pittsburgh, Exr. in New York case, filed.

June 23, 1937. Copy of Answer of Richard K. Mellon, Exr. in New York case, filed.

June 23, 1937. Copy of Answer of Jennie King Mellon, Exr. in New York case, filed.

June 23, 1937. Copy of Answer of Sarah Mellon Scaife, Exr. in New York case, filed.

June 23, 1937. Copy of Answer of United States Aluminum Company in New York case, filed.

June 23, 1937. Copy of Answer of Surinaamsche Bauxite Maatschappij in New York case, filed.

June 23, 1937. Copy of Answer of St. Louis & Ohio River Railroad in New York case, filed.

June 23, 1937. Copy of Answer of Massena Terminal Railroad Company in New York case, filed.

June 23, 1937. Copy of Answer of St. Lawrence River Power Company in New York case, filed.

June 23, 1927. Copy of Answer of Republic Mining and Mfg. Company in New York case, filed.

[fol. 5d] June 23, 1937. Copy of Answer of Ocean Dominion Steamship Corp. in New York case, filed.

June 23, 1937. Copy of Answer of Massena Securities Corp. in New York case, filed.

June 23, 1937. Copy of Answer of Louisiana Terminal Co. in New York case, filed.

June 23, 1937. Copy of Answer of Knoxville Power Co. in New York case, filed.

June 23, 1937. Copy of Answer of Cedar Rapids Transmission Company in New York case, filed.

June 23, 1937. Copy of Answer of Alton & Southern Railroad Co. in New York case, filed.

June 23, 1937. Copy of Answer of Aluminum Seal Co. in New York case, filed.

June 23, 1937. Copy of Answer of Bauxite & Northern Railway Co. in New York case, filed.

June 23, 1937. Copy of Answer of Alcoa Power Co. Ltd. in New York case, filed.

June 23, 1937. Copy of Answer of Aluminum Ore Co. in New York case, filed.

June 23, 1937. Copy of Answer of Aluminum Cooking Utensil Company in New York case, filed.

June 23, 1937. Copy of Answer of J. R. D. Huston in New York case, filed.

June 23, 1937. Copy of Answer of George R. Gibbons in New York case, filed.

June 23, 1937. Copy of Answer of C. B. Fox in New York case, filed.

June 23, 1937. Copy of Answer of J. J. Demskie in New York case, filed.

June 23, 1937. Copy of Answer of Roy A. Hunt in New York case, filed.

June 23, 1937. Copy of Answer of Safford K. Colby in New York case, filed.

June 23, 1937. Copy of Answer of George H. Clapp in New York case, filed.

June 23, 1937. Copy of Answer of Robert E. Withers in New York case, filed.

June 23, 1937. Copy of Answer of Arthur V. Davis in New York case, filed.

June 23, 1937. Copy of Answer of C. L. Lycette in New York case, filed.

June 23, 1937. Copy of Answer of George J. Stanley in New York case, filed.

June 23, 1937. Copy of Answer of Paul J. Urquhart in New York case, filed.

June 23, 1937. Copy of Answer of Carolina Aluminum Company in New York case, filed.

June 23, 1937. Copy of Answer of Nantahala Power & Light Company in New York case, filed.

June 23, 1937. Aluminum Co.'s Requests for Findings of Fact & Conclusions of Law, filed.

June 25, 1937. Stenographer's Notes of Testimony at Trenton hearing, filed.

June 26, 1937. Ste*on*grapher's transcript of oral arguments of counsel at Trenton hearing, filed.

June 30, 1937. Additional Requests of Aluminum Co. for Findings of Fact and Conclusions of Law, filed.

July 1, 1937. Petitioner's Proposed Findings of Fact, filed.

July 1, 1937. Petitioner's Proposed Conclusions of Law, filed.

July 1, 1937. Petitioner's Reply Brief in Opposition to Defendants petition to enjoin Government counsel from proceeding in the New York suit, filed.

July 21, 1937. Opinion by Thompson, J., filed.

July 27, 1937. Hearing on Form of Decree and Petition of Aluminum Co. for appeal and supersedeas, Coram: Davis, Thompson & Biggs, JJ.

July 27, 1937. Final Decree filed.

July 27, 1937. Exception to Aluminum Co. of America, filed.

July 27, 1937. Petition of Aluminum Co. of America, filed.

July 27, 1937. Order Allowing Appeal to Supreme Court, filed.

July 27, 1937. Assignments of Error filed.

July 27, 1937. Statement of Jurisdiction filed.

July 27, 1937. Bond on Appeal filed.

July 27, 1937. Citation on Appeal filed.

July 27, 1937. Proof of service of Appeal papers, filed.

July 27, 1937. Notice of Lodgment of Statement of Evidence filed.

July 27, 1937. Approved Narrative Statement of Evicence filed.

July 27, 1937. Præcipe for Record filed.

June 28, 1937. Order Permitting Substitution of Copies for certain original papers.

[fol. 6] IN UNITED STATES DISTRICT COURT

PETITION IN EQUITY—Filed May 16, 1912

To the honorable judges of the District Court of the United States for the Western District of Pennsylvania, sitting in equity:

The United States of America, by John H. Jordan, its attorney for the Western District of Pennsylvania, acting under the direction of its Attorney General, brings this proceeding in equity against the Aluminum Company of America, a corporation formerly known as the Pittsburgh Reduction Company.

On information and belief your petitioner alleges and shows:

I

That the Aluminum Company of America is a corporation organized under the laws of the State of Pennsylvania, with its principal office at Pittsburgh, Pennsylvania, in the Oliver Building. Prior to November 12, 1906, its name was "The Pittsburgh Reduction Company." In this petition the term "defendant" will refer to it under either designation.

II

Object of Action

The defendant is now and for a long time past has been continuously engaged in interstate trade and commerce in crude and semifinished aluminum, and in the various manufactured products of aluminum, and in bauxite and alumina, raw materials necessary to the manufacture of crude aluminum.

[fol. 7] Said defendant, so engaged, has been and is now violating the provisions of the act of Congress passed July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," in that said defendant has heretofore made, and its business has been and is now conducted under and in pursuance of certain contracts, combinations and conspiracies in restraint of trade and commerce among the several States of the United States and with foreign countries in bauxite, alumina, aluminum, both crude and semi-finished, and the manufactured products of aluminum, including both stamped and spun cooking utensils, castings, and general manufactured novelties and products; and defendant is attempting to monopolize said trade and commerce, and has monopolized a part thereof, and this action is brought to prevent and restrain defendant, and its officers and agents, from further violating said Act in respect to said commerce. The character of said contracts, combinations, and conspiracies, and of said monopoly and attempts to monopolize, and wherein the same are unlawful, will appear from the facts hereinafter stated.

III

Description of Industry

A. Aluminum

Aluminum is a most useful metal. It is better adapted for many purposes in their respective spheres than either steel, nickel, tin, zinc, copper, or lead, its chief industrial competitors. The industrial welfare and progress of the [fol. 8] United States demand that trade and commerce in such a useful metal shall be unrestrained, so that its use may become as general and extensive as possible.

The use of aluminum in commerce and the industries is a matter of comparatively recent development. Though the metal has been known since about 1722, yet prior to 1889 it was regarded as a precious metal, extracted only in small quantities, at great expense, and sold by the ounce, and at any price demanded. In 1886 Charles M. Hall applied for a patent on a process for the manufacture of aluminum, by which he was able, with the aid of the electric current, to produce aluminum cheaply in large and commercial quantities. A patent thereon was granted to Hall on April 2, 1889. In 1883 Charles S. Bradley had applied for a patent, under which, also by using electricity, he was likewise able to make aluminum in large quantities and cheaply. A patent was granted to Bradley February 2, 1892. Simultaneously and independently, in France, a French inventor, Herroult, discovered and applied substantially the same processes. The Pittsburgh Reduction Company, under which name the defendant was first incorporated, was chartered September 18, 1888, by the State of Pennsylvania, for the stated purpose of "reducing refractory ores and producing bronzes and commercial alloys, and manufacturing and dealing in the same," but, in reality, chiefly for the purpose of manufacturing the metal aluminum by the use of the Hall patent process, of which it had become the owner. The Cowles Electric Company, of Lockport, New York, as assignees, by litigation, established its title to the [fol. 9] essentials of the Bradley process. Finally, on October 20, 1903, it was held by the Circuit Court of Appeals of the Second Circuit that the Bradley patent was infringed by the manufacture of aluminum as it was being practiced and carried on by the Pittsburgh Reduction Company, ostensibly under its Hall patent. In the meantime, from

1889 to 1903, the Pittsburgh Reduction Company had developed the aluminum industry in the United States until the production of the crude metal aluminum, in the shape of pigs or ingots and sheets, had become a large commercial industry with a resulting commodity moving extensively in interstate commerce. The total amount per annum of aluminum at that time so made and moving was about 6,000,000 pounds. For a part of said time the Cowles Electric Company was also making aluminum under the process covered by the Bradley patent. About October, 1903, after the adverse decision against defendant, defendant acquired from the Cowles company the exclusive rights to make aluminum under the Bradley patent.

The price of aluminum had been reduced until in 1903 its general market price was about 33 cents per pound for the common aluminum pig or ingot. Under protection of its patents defendant made rapid strides in the development of the industry in the United States. Its basic patents have now expired, the Hall patent expiring April 2, 1906, and the Bradley patent February 2, 1909. Simultaneously, the industry grew in Europe. From 1903 until the present the production and demand for the metal aluminum in its varied forms increased very rapidly until, in [fol. 10] 1911, there was produced by defendant about 44,000,000 pounds. Likewise its cost of production has been greatly reduced, but its general market price in the United States has not been correspondingly lowered.

The demand for aluminum has increased chiefly along four general lines, as follows:

1st. For sheet and tube aluminum in the manufacture of stamped and spun cooking utensils, for which the metal is especially well adapted because of its lightness, non corrosive quality, and durability.

2nd. For castings, particularly in the automobile industry, for which it is so well adapted because of its lightness, combined with strength.

3rd. For wire and cable, and similar forms, because of its lightness coupled with strength and conductivity, it being a better conductor pound for pound than copper.

4th. In the manufacture of useful and novelty articles of every description, for which it is particularly well adapted because of its lightness, noncorrosiveness and malleability.

B. Bauxite and Alumina

The metal aluminum is made from oxide of alumina, which is bauxite, refined and calcined. Bauxite is the crude ore or clay as it is found in extensive natural deposits, from which the metal aluminum is finally made. Because of varying degrees of impurity in which bauxite occurs, not all of it can be refined into alumina suitable for the manufacture of the metal aluminum, and large quantities of the [fol. 11] inferior grades are also extensively used in the manufacture of commercial, or iron free alum. At the time when the Pittsburgh Reduction Company entered the field of making the metal aluminum in commercial quantities, and for some time thereafter, the bauxite deposits of America were owned and controlled by many independent and naturally competing individuals and companies. No one person, firm, or corporation, then owned or controlled enough of the bauxite deposits to exercise any dominating influence over its supply, for the making either of metal aluminum or alum, in the United States.

IV

History of Purchases and Monopolies Relating to Bauxite, Alumina, Aluminum, and Aluminum Wares

A. Bauxite

Defendant Aluminum Company of America, through its officers and agents, and through the American Bauxite Company, a corporation whose capital stock is owned by defendant, has acquired, by ownership or lease, and now owns and controls more than 90 per cent of all the known deposits of bauxite in the United States and Canada, that is of such character that the metal aluminum can be manufactured therefrom in commercial quantities and sold in competition with importations from abroad. Before 1905, while defendant owned extensive and valuable bauxite properties, yet they did not approach 50 per cent of the known [fol. 12] available supply in the United States. In about said year 1905, through the friendly offices of the General Chemical Company, by squeezing out the minority stockholders who desired to continue independent, defendant acquired the ownership and possession of all the very extensive and valuable bauxite properties of the General Chemical Company, a corporation.

In 1911, defendant purchased the valuable aluminum bauxite properties of the Republic Mining and Manufacturing Company, from or through the Norton Company. At the time of said purchase, the said Republic Mining and Manufacturing Company possessed the largest portion of the then remaining outstanding bauxite supply in America, available for aluminum manufacture.

The only remaining independent producer of bauxite in the United States, in quantities sufficient to appreciably affect the market for bauxite to be used in the manufacture of aluminum, is the National Bauxite Company; but as yet it has never mined or sold bauxite for the purposes of making aluminum, its output having been used entirely in the manufacture of alum and chemicals.

The only other possible competitors handling bauxite in the United States, of sufficient quantity to justify any one in now entering upon the manufacture of aluminum, are the General Chemical Company, Norton Company, and Pennsylvania Salt Manufacturing Company, with each of whom defendant has now and for some time past has had in existence agreements and contracts, hereafter more fully referred to in divisions six, seven, and eight of this peti- [fol. 13] tion, by the terms of which the said three potential competitors are forbidden and restrained from selling bauxite to any person or company except defendant for use in making the metal aluminum and from so using it themselves. The purpose and effect of the acquisitions of bauxite properties by the defendant, as hereinbefore described, and of procuring the agreements and contracts herein mentioned were to monopolize the raw material in the United States used in the manufacture of aluminum, and thus to perpetuate defendant's monopoly of the manufacture of such metal in the United States, and unlawfully to restrain and monopolize the interstate and foreign trade and commerce therein.

B. Alumina

The only refiners, in material quantities, of bauxite into alumina suitable for the making of the metal aluminum, in the United States, are the Aluminum Ore Company, the Pennsylvania Salt Manufacturing Company, and possibly the Merrimac Chemical Company. The Aluminum Ore Company is a corporation whose capital stock is owned and whose business policy is controlled by defendant. This

company refines about 75 per cent of the total amount of bauxite converted into alumina in the United States. The amount of alumina produced by the Merrimac Chemical Company is negligible, not being sufficient to affect the market to any appreciable extent. For the refining of French bauxite into alumina for the manufacture of the metal aluminum the Beyer patent process was essential, and the Pennsylvania Salt Manufacturing Company had an agree- [fol. 14] ment with the Merrimac Chemical Company by which the Pennsylvania Salt Manufacturing Company acquired sole rights to its use in the United States. Thereafter the defendant and Pennsylvania Salt Manufacturing Company entered into a contract, hereinafter more fully referred to in division eight of this petition, the purpose and effect of which was to restrain the Pennsylvania Salt Manufacturing Company from furnishing alumina for the manufacture of aluminum to any one except defendant. In addition thereto, contracts were made between the defendant and the General Chemical Company and Norton Company, the only other possible producers of alumina in the United States in sufficient quantities to create competition in supplying alumina to prospective manufacturers of aluminum. Said contracts are hereinafter more fully referred to in divisions six and seven of this petition. Said agreements provided that neither said General Chemical Company nor Norton Company would use or sell alumina for manufacture into aluminum to any one but the defendant. The purpose and effect of the several contracts thus made by defendant and said parties were to illegally restrain interstate trade and commerce in alumina by preventing any of the parties except defendant from entering upon its manufacture for the purpose of producing aluminum except for defendant, and into trade and commerce therein except selling and shipping the same to defendant, and to maintain down to the present time the monopoly which defendant has in the manufacture of aluminum in the United [fol. 15] States and a substantial monopoly of the interstate trade and commerce therein.

C. Aluminum

1. Aluminum Cooking Utensils.

Several separate, independent, and competing companies have at various times engaged in the manufacture of

stamped and spun cooking utensils from aluminum. (In this petition no reference is had to cast cooking utensils.) The history of the aluminum cooking-utensils business in the United States is a history of shipwrecks—possibly in part caused by inefficiency, necessity of experiment, and lack of capital, but caused chiefly or contributed to by the arbitrary, discriminatory, and unfair dealings of the defendant Aluminum Company of America, to whom the several pioneers in this industry had to look as their sole available source of supply of the raw material in the shape of sheet metal and tubes.

The United States Aluminum Company, the Aluminum Cooking Utensils Company, and the Northern Aluminum Company (Limited) own and control approximately seventy-eight per cent of the stamped and spun aluminum cooking-utensil business of the United States and Canada. Said companies are duly organized corporations, and practically all of the stock of the United States Aluminum Company and of the Northern Aluminum Company and a majority of the stock of the Cooking Utensils Company is owned by the defendant, the only American source of sup- [fol. 16] ply of aluminum sheets, plates, or tubes, out of which said aluminum cooking utensils are made; and as against all competitors they receive favorable discriminations in price, quality, and conditions. Through said subsidiary companies defendant is in control of practically the entire interstate trade and commerce in aluminum cooking utensils in the United States, and unlawfully, substantially, and unduly has restrained and monopolized such interstate trade and commerce and will continue so to do unless restrained by this court.

2. Aluminum Castings

Prior to 1909 there were a number of independent manufacturers of aluminum castings throughout the United States. The patents on the processes of making aluminum, which, as to the United States, were controlled by defendant, were about to expire. With the declared purpose of "closing the only door remaining open to our complete control of the aluminum industry in America" the defendant, about May 29, 1909, caused to be formed a combination of the larger plants thus independently engaged in the manufacture of aluminum castings, said plants being situ-

ated at strategic positions for the furnishing of such castings to the automobile trade, which constitutes a very large per cent of the aluminum castings industry. At first there were united several companies engaged in the manufacture of aluminum castings, one at Cleveland, Ohio, one at Detroit, Michigan, and one at Buffalo, New York, under the name of the Allyne Brass Foundry Company. With this [fol. 17] combination, so far as petitioner is informed, defendant had no connection. About May, 1909, the plants thus combined, together with the castings business of the United States Aluminum Company, at New Kensington, Pennsylvania, owned by the defendant, and the Syracuse Aluminum and Bronze Company, of Syracuse, New York, and the Eclipse Foundry Company, of Detroit, Michigan, were, by a process of stock exchange and certain payments in cash, combined into the Aluminum Castings Company, a corporation organized under the laws of Ohio; and the defendant is the owner and holder of 1,625 out of the 4,000 shares of its common stock. This stock ownership, combined with the fact that defendant is the only profitable source of supply of aluminum ingot in the United States, enables defendant to control and dictate the policy of said Aluminum Castings Company; and, further, such stock ownership is an incentive for defendant to discriminate in the sale and supplying of aluminum metal to said Aluminum Castings Company as against its competitors. Moreover, it was the purpose and intent of the defendant, in the formation of said castings combination, as then declared, to then take in only such plants as were needed to do the castings business, and thereafter to so discriminate in their favor and to give them such preferential prices on their ingot, beginning with 2 cents and increasing same to 5 cents per pound, if necessary, as would either destroy their competitors or compel them to come into said combination.

Petitioner alleges that such declared intent has been and is being carried out, with the result that several competing [fol. 18] castings companies have been compelled to sell their business at a loss to said Castings Company; and unless defendant be restrained and inhibited from unjustly and unlawfully discriminating as described in favor of said Aluminum Castings Company, said company will acquire a complete monopoly of the aluminum castings business in

the United States and of the interstate and foreign trade and commerce therein.

3. Aluminum Goods and Novelties

As heretofore stated, another branch of the aluminum industry is that of the manufacture of numerous kinds of wares for general use, and of aluminum novelties. Several large and competing plants in the United States have through the efforts of the defendant, being united under the corporate name of the Aluminum Goods Manufacturing Company, a corporation organized under the laws of the State of New Jersey. The defendant owns 37 per cent of the capital stock of this corporation; and this ownership, coupled with the fact that defendant is the sole available source of supply of raw material at reasonable rates, places defendant in control of the policy of the said Aluminum Goods Manufacturing Company. Petitioner further alleges that, on account of its interest in said company, defendant furnishes crude and semifinished aluminum to said Aluminum Goods Manufacturing Company at preferential rates, thereby enabling the said Aluminum Goods Manufacturing Company to underbid its competitors to whatever extent desired, and that such preferentials are granted by defendant with the purpose either of compelling its competi- [fol. 19] tors to lose their contracts and proposals or to do the work at little or no profit, thus finally compelling them either to sell to and combine with defendant or to abandon said field of manufacture entirely, leaving the Aluminum Goods Manufacturing Company in complete control thereof; and unless such unjust and unlawful discriminations be restrained the attempt to monopolize the said interstate and foreign trade and commerce will materialize into a complete monopoly thereof in said Aluminum Goods Manufacturing Company, which monopoly will be dominated and controlled by defendant.

V

The A. J. A. G. Agreement of September 25, 1908

About September 25, 1908, the defendant Aluminum Company of America, acting through the Northern Aluminum

Company, of Canada, which is entirely owned and controlled by defendant, entered into an agreement with the so-called Swiss or Neuhausen Company, of Europe, which is the largest of the European companies engaged in the alumium industry and designated in this agreement as "A. J. A. G.," parts thereof material to this action being as follows:

2. The N. A. Co. agree not to knowingly sell aluminum, directly or indirectly, in the European market.

The A. J. A. G. agree not to knowingly sell aluminum, directly or indirectly, in the American market (defined as [fol. 20] North and South America, with the exception of the United States; but including West Indies, Hawaiian and Philippine Islands).

4. The total deliveries to be made by the two companies shall be divided as follows:

European market, 75% to A. J. A. G., 25% to N. A. Co.

American market, 25% to A. J. A. G., 75% to N. A. Co. Common market, 50% to A. J. A. G., 50% to N. A. Co.

The Government sales to Switzerland, Germany, and Austria-Hungary are understood to be reserved to the A. J. A. G.

The sales in the U. S. A. are understood to be reserved to the Aluminum Company of America.

Accordingly the A. J. A. G. will not knowingly sell aluminum, directly or indirectly, to the U. S. A., and the N. A. Co. will not knowingly sell, directly or indirectly, to the Swiss, German, and Austria-Hungarian Governments.

5. The N. A. Co. engages that the Aluminum Company of America will respect the prohibitions hereby laid upon the N. A. Co.

Said agreement became effective October 1, 1908, and provided that it should "last until terminated by a six months' written notice," and petitioner avers that said agreement became effective and has been continuously since said date, and is now, in full force and effect, unless terminated by notice.

[fol. 21] The purpose and effect of this agreement was an illegal restraint upon the trade and commerce in aluminum among the several States and with foreign coun-

tries and to continue defendant's monopoly of the same in the United States.

VI

The General Chemical Company Contract

On or about the 25th day of July, 1905, defendant entered into a contract with the General Chemical Company for the purpose of acquiring through said General Chemical Company all the capital stock of the General Bauxite Company, and, as a part of the consideration of said contract, it agreed to cause the General Bauxite Company, when so acquired by the defendant, to execute back to the General Chemical Company a contract relating to bauxite for aluminum, which contract was shortly thereafter consummated as agreed and became effective, and the fourth and eighth sections thereof, the sections material to this controversy, are as follows:

Fourth. Said chemical company further expressly covenants and agrees that it will not use or knowingly sell any of the bauxite sold to it by the said bauxite company hereunder, or any other bauxite, or the products thereof for the purpose of conversion into the metal aluminum, and that upon proof that any of said bauxite or products thereof have been put to any such use it will not make any further sales or deliveries to the purchaser thereof.

[fol. 22] Eighth. It is understood and agreed that the bauxite sold hereunder by the said bauxite company to the said chemical company shall be used by the said chemical company and by companies under its control or whose stock is largely held by it, and by no other person or party, and only for the manufacture of alum, alum salts, alumina sulphate, or alumina hydrate for alum and its compounds, and for no other purpose whatsoever.

The fifth section of the contract between defendant and the General Chemical Company, material to this controversy, is as follows:

Fifth. The said reduction company agrees to use its good offices in the interest of said chemical company so far as relates to promoting the trade of the latter in alum and alum products in the United States and in foreign countries; and said chemical company reciprocally undertakes and agrees to use its good offices in the interest of said reduction

company so far as relates to promoting the metal business of the latter in the United States and foreign countries.

The purpose and effect of said agreements were illegally to restrain interstate trade and commerce in bauxite, alumina for the manufacture of aluminum, and aluminum, by preventing any producer or prospective producer of aluminum, except the defendant, from acquiring bauxite or alumina for the manufacture of aluminum from the General Chemical Company, and it tended illegally to preserve and maintain defendant's monopoly in bauxite, and alumina for [fol. 23] the manufacture of aluminum, and in the trade and comerce therein in the United States.

VII

The Norton Company Contract and Acquisition of the Republic Mining and Manufacturing Company

About April 20, 1909, defendant entered into a contract with the Norton Company by which defendant agreed to and did purchase from the said Norton Company the bauxite properties of the Republic Mining and Manufacturing Company, whose capital stock was owned by the Norton Company, with one reservation. The parts of said contract which are here specially material are sections ten and eighteen, which are as follows:

Tenth. Norton Company may mine and use bauxite from the said forty-acre tract of bauxite land referred to in paragraph D above, which shall be used for the purpose of manufacturing alundum, and may mine and sell from the said property bauxite or other mineral taken therefrom for any purpose except for the manufacture of aluminum, and Norton Company shall not sell or otherwise dispose of said forty-acre tract except subject to the above restrictions.

Eighteenth. Norton Company shall not at any time during the continuance of this agreement use or sell any of the bauxite contained on the said forty-acre tract described in paragraph D above, or any other bauxite, or the products [fol. 24] thereof, hereafter acquired by Norton Company, in the United States of America or the Dominion of Canada, for the purpose of conversion into aluminum.

The purpose and effect of this agreement was illegally to restrain the trade and commerce in bauxite for the manufacture of aluminum, by preventing any other producer or prospective producer of aluminum except the defendant from acquiring bauxite for aluminum from said Norton Company; and it tended to strengthen the defendant in its monopoly of the aluminum industry and of the interstate and foreign trade and commerce therein.

VIII

The Pennsylvania Salt Company Contract

About January 1, 1907, defendant and the Pennsylvania Salt Manufacturing Company entered into an agreement, which among other things provided:

The Pennsylvania Salt Manufacturing Company agrees not to enter into the manufacture of aluminum as long as this agreement is in force.

This agreement was ratified, explained, and enlarged by the Pennsylvania Salt Manufacturing Company in a letter dated January 1, 1907, as follows:

Referring to the clause in the contract of this same date [fol. 25] between our companies, for the sale and purchase of alumina, wherein we agree not to engage in the manufacture of aluminum during the term of the contract, or the extension thereof in case you avail yourselves of the option contained in the contract for its extension, we wish to assure you that this clause will be carried out to the full extent of the spirit and intent as expressed in our verbal conversations; that is, we will not manufacture aluminum ourselevs, nor allow any company in which we own a controlling interest to do so, nor will we invest any of our capital in any way, through the stock of any corporation or otherwise, in the manufacture of aluminum. Furthermore, we will not sell, directly or indirectly, any hydrate or anhydrate of alumina, while the contract or any extension of it may be in effect, to any person or persons for use in the manufacture of aluminum; and in case it should be discovered that any persons to whom we have sold alumina have resold it so that it is being used in the manufacture of aluminum, we will take such steps as to future sales to

such persons as will prevent any alumina which has been manufactured by us being used in the manufacture of aluminum.

The purpose and effect of this agreement and ratification was illegally to restrain the interstate and foreign trade and commerce in aluminum by preventing the Pennsylvania Salt Manufacturing Company from entering into the field of the manufacture of and trade and commerce in aluminum, [fol. 26] and it tended illegally to maintain defendant's existing monopoly in said trade and commerce.

IX

The Kruttschnitt-Coleman Agreement

About November 16, 1910, an agreement was entered into between defendant and Gustav A. Kruttschnitt, of Newark, New Jersey, and James C. Coleman, of Newark, New Jersey, by which there was sold to the defendant 724 shares of the capital stock of the New Jersey Aluminum Company, an independent and competing company engaged in the manufacture of general aluminum goods and novelties, and by the terms of this agreement it was provided that—

As part consideration for the execution of this agreement by Aluminum Company Kruttschnitt and Coleman hereby severally agree that for the period of twenty years from the date hereof, in that part of the United States of America east of a north and south line through Denver, Colorado, neither Kruttschnitt nor Coleman will directly or indirectly engage or become interested in the manufacture or fabrication or sale of aluminum or any article made substantially of aluminum, provided that either or both the said Kruttschnitt and Coleman may be employed by or become interested in Aluminum Company or said Aluminum Goods Manufacturing Company without committing a breach of this contract.

[fol. 27] The purpose and effect of this provision was to eliminate said Kruttschnitt and Coleman from the aluminum industry for a period of twenty years, and thus illegally to restrain the trade and commerce among the States therein, and to enable defendant to further monopolize the same.

X

Acts in Unfair Competition

From 1889 until the present, whenever any independent aluminum industry of any kind gave promise either of being valuable to defendant if acquired, or of becoming a possible competitor of defendant or of any company in which it had an interest, defendant undertook, by unfair discriminations and other means, either to force such concern to sell its properties and business to or combine them with defendant itself or a company in which it was interested, or entirely to abandon the aluminum business, and in but very few instances did defendant fail of its purpose Not all the methods used by defendant are known to petitioner, but those known are as follows:

Defendant would suggest to the competing company a sale to defendant of its plants, and at the same time would threaten the establishment of a large competing plant of its own in such line of manufacture, and if the suggestion was not heeded, the independent would be harassed as to material and prices, to impress fully upon the said independent how completely it was at the mercy of defendant for its supply of raw material. Among other methods of harassing such independents defendant used the following: [fol. 28] It would delay forwarding bills of lading, and would refuse to supply independents further with metal, sometimes abruptly ceasing entirely to ship metal without warning or statement of excuse of any kind, or causing its controlled companies to do so, so that the concern affected was unable to fill its orders.

It discriminated against independents as to price for the crude aluminum needed, so that they were unable successfully to bid against or compete with the favored industries and obtain a living margin of profit.

It frequently refused to sell aluminum metal to those desiring to enter the business of manufacturing aluminum goods, thereby preventing an expansion of the industry and restraining trade therein.

It refused to sell to others desiring to enter said field any aluminum metal unless they would agree not to engage in any line in any manner competing with the lines of the defendant and its allied companies.

It refused to guarantee quality, and at times delivered to competing plants metal which was known to be worthless

and which had been rejected by plants allied to defendant.

It demanded to know the prices at which independent competitors had bid on or taken contracts for work to be done before it would furnish them the metal required to fill the contracts or even quote prices of same, and it would impart the knowledge thus obtained to an allied company competing with such purchaser.

[fol. 29] It represented and intimated to independent concerns and customers that, unless they dealt with defendant or its allied companies as to crude aluminum, their supply thereof would be cut off, or they would be unable to get their entire supply at reasonable prices.

It represented and intimated to dealers in and consumers of aluminum wares that, unless they dealt with defendant or its allied companies, their supply of the manufactured product would be cut off.

It represented and intimated to consumers that, if they did not buy of the defendant or of its allied companies, they would be buying of manufacturers who would be without the metal to complete their contracts, and intimated to consumers that a new international agreement, such as had been in effect, would be put into effect again, thereby leaving defendant the only source of supply within the United States at any price; and it was especially by this conduct that big consumers were driven away from competing manufacturers.

One competitor who was preparing to enlarge his plant was threatened by defendant that if he did so he would be put out of business (the defendant being at said time the sole available source of supply for the raw material needed).

It, either directly or through its controlled companies, bid on supplies for the best customers of the independent competing companies at such prices that it was impossible for such companies, who were compelled to purchase their raw material from defendant, to successfully compete therewith.

[fol. 30] Defendant claimed to have gone into the cooking-utensils business for the purpose of increasing the market for its aluminum sheets faster than it was being developed. Yet when it entered upon this branch of the industry it purposely was subjecting the then makers of such utensils to delays on shipments; and petitioner alleges that having seen that such manufacture was growing into

a profitable business, it entered therein for the purpose of monopolizing it, along with the other branches of the aluminum industry.

Certain large customers of defendant for a time made only novelties of aluminum, in which business neither defendant nor an allied company was engaged. During said period they had no trouble about getting from defendant a sufficient supply of aluminum of any desired kind and specifications. Later some of these firms entered into the business of making cooking utensils of aluminum. Thereupon delays and harassments in obtaining metal from defendants were begun and continued. At or about the time some of such manufacturers entered into said competitive business, defendant threatened that if they engaged therein they might expect loss. Such threats were consummated by the refusal to furnish metal in such a manner and in such quantities and of such quality as to enable such firms to take or properly complete orders, and thus some were compelled to abandon said business.

It required some customers to make contracts not to engage in competitive lines of manufacture, and also at times required an agreement to maintain certain fixed prices, or prices above a designated minimum, on manu- [fol. 31] factured articles in sale and resale, as a condition precedent to receiving metal.

XI

Effects of Contracts, Combinations, and Acts Described

By virtue of the contracts and combinations and acts of defendant above described, defendant has eliminated nearly all competitors of consequence from the various branches of the aluminum industry, and has acquired and maintains substantial control of the various products of the aluminum industry in the United States moving in interstate trade and commerce. It owns and produces more than 90 per cent of the raw material bauxite suitable for the manufacture of aluminum. It produces practically 80 per cent and consumes substantially 100 per cent of the alumina used in the manufacture of aluminum. It manufactures substantially 100 per cent of the crude and semi-finished aluminum manufactured in the United States and Canada. It manufactures and sells more than 70 per cent

of the aluminum cooking utensils in the United States. It controls the manufacture and sale of more than 50 per cent of all the aluminum castings manufactured and sold in the United States. It controls the manufacture and sale of over 70 per cent of all aluminum goods and novelties of general make manufactured and sold in the United States. By reason of the contracts and combinations aforesaid, and defendant's ownership of the raw material and the metal aluminum manufactured therefrom, defendant [fol. 32] can at will exclude practically all competitors, actual and prospective, from the interstate and foreign trade and commerce in aluminum goods, and can itself continue to monopolize the same.

XII

The Purpose Permeating Said Contracts, Combinations, and Acts

The contracts and agreements and various acts above described were made with the intent and purpose upon the part of defendant to destroy all real and substantial competition in every branch of the aluminum industry in the United States, and thus to restrain the interstate and foreign trade and commerce therein and to completely monopolize the same.

This intent of the defendant was present when it, under its then name Pittsburgh Reduction Company, acquired the rights under the Bradley patent from the Cowles Company, coupled with a contract preventing them from engaging in the manufacture of aluminum, and preventing the assignee from making partial assignments of said rights, although it is not insisted that said agreement was within itself unlawful. This intent of defendant was also present when it acquired its various bauxite deposits in America subsequent to its first holdings therein, and it also inspired the formation of the United States Aluminum Company, the Aluminum Cooking Utensils Company, Aluminum Castings Company, and the Aluminum Goods Manufacturing Company, and was the motive which prompted defendant [fol. 33] to seek and obtain the various contracts above mentioned for obtaining alumina and preventing alumina and bauxite from being furnished for the manufacture of aluminum to any prospective aluminum makers, and said intent has permeated defendant's business policies and

shaped its business methods from its organization down to the present time.

XIII

Growth and Profits

Under date of September 18, 1888, the Aluminum Company of America, under its original name, the Pittsburgh Reduction Company, obtained its charter as a corporation from the State of Pennsylvania. It was capitalized at $20,000. Its capital stock was increased on September 27, 1889, to $1,000,000, of which an additional $10,000 was paid for in cash, $250,000 was to be paid as called for, and the entire balance of $720,000 was estimated as the value of certain letters patent issued to Chas. M. Hall covering a process for making aluminum. Under these patents (April 2, 1889) said company at once proceeded to make aluminum in commercial quantities. The corporation has grown rapidly in size and financial strength, until now it and its subsidiary corporations own assets estimated at $27,000,000. With the possible exception of $1,000,000, this represents solely earnings derived from its aluminum business, and includes one recent stock dividend of 500 per cent, or $16,000,000, declared on December 15, 1909. Besides this, substantial [fol. 34] dividends were paid from earnings from time to time to its stockholders in cash.

Besides its interest in the Aluminum Castings Company, as elsewhere stated, the defendant owns all of the capital stock of the following corporations, to wit, Northern Aluminum Company (Limited) of Canada, Bauxite and Northern Railway Company, United States Aluminum Company, Aluminum Ore Company, American Bauxite Company, Aluminum Cooking Utensils Company, the St. Lawrence Securities Company, and Electric Carbon Company.

The Aluminum Cooking Utensils Company owns no property, and is simply a selling company for the disposal of the products of the United States Aluminum Company.

Defendant in its reports admits a profit on all its claimed investment of $27,000,000 for 1910 of 17 per cent. Petitioner alleges that the earnings on the capital engaged in the aluminum business proper in the United States is a much larger percentage than that, and that said profits, which the consuming public of the United States must pay, are unreasonable; but the exact percentage thereof is to

the petitioner unknown. A large part of defendant's capital which is invested elsewhere than in the United States has not earned as large a percentage of profit as that invested here. So, also, it carries on a large export trade at a profit much lower than that realized from its trade in the United States. While these facts bring down the average earnings of its entire business to the figures shown by defendant in its statement, they offer no relief to the [fol. 35] domestic public against the unreasonable profits exacted from them on aluminum goods proper.

In view of the vast increase in the production and uses and general need of the public, the prices now charged by defendant for aluminum and its products are unreasonable in proportion to its cost. Likewise, defendant, through its controlled branches of the industry, continues frequently to charge unreasonably high prices and profits.

In certain industries defendant also frequently compels customers to agree to resell at fixed prices which are unreasonably high.

XIV

Wherein the Antitrust Law Has Been and Is Being Violated

Defendant has violated and continues to violate the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," in this:

It is not claimed by petitioner that it was unlawful for defendant to exclude all others from the manufacture of aluminum while it was operating under the Hall and Bradley patents, and hence it is not insisted that the monopoly held by defendant in the manufacture of aluminum in the United States when said patents expired in 1909 was an unlawful one.

Furthermore, petitioner does not now insist that it was unlawful within itself for defendant by the various purchases above described to acquire and hold so large a per [fol. 36] cent of the bauxite known to exist in the United States suitable for the manufacture of aluminum. What other deposits of bauxite there may be in the United States, and the character and extent thereof, it is impossible now to state; but petitioner is advised that there are practically inexhaustible quantities abroad, which may be mined and shipped into the United States at such prices as would enable independent companies to successfully compete with

defendant were all other restraints removed from the aluminum industry. Hence, petitioner does not attack defendant's ownership of the various deposits of bauxite to which it now has title. But it insists that the fact that it possesses a practical monopoly in said raw material must be considered in connection with all the other facts herein alleged in determining whether the interstate and foreign trade and commerce in aluminum metal and wares have been and are being unlawfully restrained and monopolized by defendant.

Therefore, while petitioner concedes that defendant's practical monopoly in both bauxite and the manufacture of aluminum in the United States which it held at the expiration of said patents was lawful, yet petitioner alleges that the means above described by which defendant has sought to and actually has maintained that monopoly were and are unlawful, in this: the provisions of the contracts with the General Chemical Company, the Norton Company, and the Pennsylvania Salt Company, which have heretofore been copied in full, were and are unlawful, because their purpose and effect were to prevent said companies from entering upon the manufacture of aluminum for the general [fol. 37] trade when their financial strength was such that they were able to become active and effective competitors of defendants, and also from furnishing raw material to any other person or company who might desire to become a competitor of defendants in the manufacture of aluminum. These provisions in said contract were especially effective on account of defendant's monopoly of bauxite in the United States.

The A. J. A. G. agreement, whereby the Aluminum Company of America, through its owned company, the Northern Aluminum Company, prevents importations and exportations and divides territory and trade in aluminum, is unlawful because made with the intent and purpose of restraining the foreign trade and commerce of the United States in aluminum, and tends unlawfully to preserve defendant's monopoly in said trade and commerce.

Likewise, that provision in the contract between defendant and Kruttschnitt and Coleman, whereby Kruttschnitt and Coleman agreed not to engage in the business of manufacturing aluminum goods, and also the various acts and devices alleged in division ten hereof, whereby those who

contemplated entering upon the business of manufacturing various lines of aluminum goods were prevented from so doing, and those who were engaged independently in such manfacture were harassed and impeded in the prosecution of their business, some being induced thereby to sell their business to or enter into combination with defendant or one of its allied companies, and also the various combinations above described of those who were engaged independently in the various lines of manufacture of aluminum [fol. 38] goods with companies whose policies are dominated by defendant and in which it has a very material fi-ancial interest, were and are all unlawful because each and every one of said acts were committed, and said contracts were made, with the intent and purpose of preventing independent concerns from entering upon, acquiring, or continuing to hold any material part of any branch of the aluminum industry, and with the further intent unlawfully to preserve and maintain defendant's monopoly in the interstate and foreign trade and commerce in aluminum and aluminum goods. And in order that the entire aluminum industry may be open to all who may desire to enter therein, and that competition may arise and the benefits may accrue to the public which naturally flow from competition, and that the interstate and foreign trade and commerce in aluminum metal, and the raw materials from which it is produced, and the goods into which it is manufactured, may be wholly unrestrained and the monopoly therein be destroyed, the above described provisions of said contracts should be canceled, and defendant restrained from enforcing the same, and it should be enjoined and inhibited from entering into any further contracts of a like or similar character, and from purchasing or combining with any other independent concerns engaged in the aluminum industry, and from committing each and every one of the acts heretofore particularly described, or any other like or similar act with like intent or effect.

[fol. 39]

XV

Jurisdiction

Petitioner avers that the contracts, combinations, and conspiracies unlawfully to restrain the interstate and foreign trade in crude and semi-finished aluminum and its raw materials and its manufactured products, and to monopo-

lize the said trade, still exist, and that the defendant is engaged in carrying out the same within the western district of the State of Pennsylvania, and that some of the acts complained of have been committed in said State and district, and are now being there committed, and that the defendant, Aluminum Company of America, has its principal place of business in said State and district.

Prayer

In consideration whereof, and inasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, your orator prays:

1. That it be adjudged that the defendant, Aluminum Company of America, has entered into contracts, combinations, and conspiracies, and is now engaged in combinations and conspiracies, and is doing, in pursuance of such contracts, combinations, and conspiracies, acts such as are denounced as illegal by the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies"; and that [fol. 40] defendant be perpetually enjoined from either directly or indirectly, by any scheme or artifice whatsoever, through its officers, agents, employees, or otherwise, doing or causing to be done anything in pursuance or furtherance of such contracts, combinations, and conspiracies within the jurisdiction of the United States.

2. That it be adjudged that the defendant, in violation of said act of July 2, 1890, has attempted and is now attempting unlawfully to monopolize, and has unlawfully monopolized, a part of interstate and foreign trade and commerce in aluminum in its various forms, crude, semifinished, or fabricated, including the raw materials necessary in its manufacture, to wit, bauxite and alumina; and that such attempted monopoly, and monopoly, have been accomplished by means or in pursuance of the various acts, contracts, combinations, and conspiracies in this petition alleged; and that defendant be enjoined from, either directly or indirectly, by any scheme or device, through its officers, agents or employees, or successors in interest, continuing said unlawful attempts to monopolize and the monopolizing of any part of said trade and commerce.

3. That the provisions of the so-called A. J. A. G. agreement, of September 25, 1908, as set out in division V of the petition, be declared null and void, and that defendant be perpetually enjoined from entering into, either directly or indirectly, or through the Northern Aluminum Company, or through any other person or corporation, or in causing, or aiding in the making of, any similar agreement, or any agreement the purpose and effect of which would be to [fol. 41] restrain the importation from any part of the world of bauxite, alumina, or aluminum, in any form, into the United States, and at a normal price, or its free exportation therefrom.

4. That the provisions of the General Chemical Company contract, as set forth in division VI of the petition, be declared a nullity and stricken from said contract, and that defendant be prohibited from entering into, or acting in pursuance of, any contract or agreement whereby any restraint whatever shall be placed upon the General Chemical Company with reference to the sale, or disposal, or use by it of any bauxite of which it may become the owner, or of any alumina or aluminum produced therefrom.

5. That the provisions of the Norton Company contract, as set forth in division VII of the petition, and all other parts of said contract in so far as they restrain the Norton Company from exercising its free and independent will in disposing of any bauxite which it may receive under the provisions of said contract, or any other bauxite which it may obtain, or any alumina made from such bauxite, be declared null and void and be abrogated, and that defendant be inhibited and restrained from hereafter entering into any contract whereby the said Norton Company may in any respect be restrained in the disposition of any bauxite which may be obtained by it from any source, or of any alumina or aluminum which it may manufacture therefrom, or may otherwise obtain.

6. That the provisions of the Pennsylvania Salt Manufacturing Company agreement and contract, together with its [fol. 42] ratification and extension, as referred to and set forth in division VIII of the petition, be declared null and void, and that defendant be enjoined from hereafter entering into any contract which shall in any respect restrain the said Pennsylvania Salt Manufacturing Company from

freely using for any purpose, or from making any disposition it may desire in the open market of any bauxite, alumina, or aluminum, the ownership of which it may acquire from any source.

7. That the provisions of the so-called Kruttschnitt Coleman agreement, referred to in division IX of the petition, be decreed to be in undue restraint of interstate trade and commerce in aluminum, and null and void, and that the provisions thereof, so far as they seek to or do in any manner restrain the free flow in interstate commerce of aluminum, or any of the manufactured products thereof, or restrain any person from entering into or engaging in said industry, be declared null and void and abrogated, and that defendant be forever restrained from again either directly or indirectly entering into a like or similar agreement.

8. That the defendant and its officers, agents, and representatives be perpetually enjoined from entering into any contract, with any other individual, firm, or corporation, of a character similar to or which contains provisions like those above quoted in the contracts between the Northern Aluminum Company and the A. J. A. G., between the Aluminum Company of America and the General Chemical Company, between said defendant company and the Norton Company, between said defendant company and the Penn- [fol. 43] sylvania Salt Manufacturing Company, and between said defendant company and Kruttschnitt and Coleman, and that defendant be enjoined from directly or indirectly entering into or participating in any combination or agreement the purpose or effect of which is to restrict the output or control the markets and prices of aluminum, or any material from which aluminum is directly or indiectly manufactured, and from making any contract or agreement for the purpose of or the effect of which would be to restrain commerce in bauxite, alumina, or aluminum, or to prevent any other person, firm, or corporation from, or to hinder him or it in obtaining an ample supply of either bauxite for aluminum, alumina, or aluminum, of a good quality, in the open market in free, fair, and open competition at reasonable prices, and from itself entering into or compelling or inducing, under any pretext or in any manner whatsoever, the making of any contract between any persons,

firms, or corporations engaged in any branch of the business of manufacturing aluminum goods the purpose or effect of which would be to fix or maintain the sale or resale prices of any of their crude, semifinished, or manufactured products.

9. That to prevent all undue discriminations upon the part of defendant and its officers and agents, or upon the part of any firm or corporation in whose business defendant owns or hereafter may acquire a financial interest by stock ownership or otherwise, against any competitor of defendant, and thus to prevent the unlawful acquisition by defendant of a monopoly in any branch of manufacturing from crude or semifinished aluminum, defendant and its [fol. 44] officers, agents, and representatives, be perpetually enjoined from either directly or indirectly committing any of the following acts, to wit:

(a) Combining either by stock ownership or otherwise with any one or more manufacturers for the purpose or with the effect of controlling or restraining the output of any product manufactured from aluminum, or fixing or controlling the price thereof.

(b) Delaying shipments of material to any competitor without reasonable notice and cause, or refusing to ship or ceasing to continue shipments of crude or semifinished aluminum to a competitor on contracts or orders placed, and particularly on partially filled orders, without any reasonable cause and without giving notice of same, or purposely delaying bills of lading on material shipped to any competitor, or in any other manner making it impossible or difficult for such competitor promptly to obtain the material upon its arrival, or from furnishing known defective material.

(c) Charging higher prices for crude or semifinished aluminum from any competitor than are charged at the same time under like or similar conditions from any of the companies in which defendant is financially interested, or charging or demanding higher prices for any kind of crude or semifinished aluminum from any competitor for the purpose or which under like or similar conditions will have the effect of discriminating against such manufacturers in bidding on proposals or contracts to the ad-

vantage of said defendant or any company in which it is financially interested.

(d) Refusing to sell crude or semifinished aluminum to prospective competitors in any branch of the manufac- [fol. 45] turing aluminum goods industry on like terms and conditions of sale, under like or similar circumstances, as defendant sells such crude or semifinished aluminum to any firm or corporation engaged in similar business in which defendant is financially interested.

(e) Requiring, as a condition precedent to selling crude or semifinished aluminum to a competitor, that such competitor divulge to defendant the terms which such competitor proposes to make in order to secure the work in which the desired aluminum is to be used, and from imparting to anyone the purpose or purposes for which said competitor is intending to use said metal.

(f) Requiring or compelling the making of agreements by competitors not to engage in any line of business, nor to supply any special order in competition with defendant or with any company in which it is financially interested, as a condition precedent to the procurement of aluminum metal.

(g) Representing or intimating to competitors that unless they dealt with defendant or with companies in which defendant has a financial interest for their supply of metal, such competitors will not be able to obtain a sufficient supply of metal, or obtain it at a price that will permit them to engage in competition with defendant or with companies in which defendant is financially interested; or in like manner representing or intimating to consumers of aluminum, in any stage of manufacture, that unless they deal with defendant or with a company in which it is financially interested, their supply of material or manufactured products will be cut off for that reason.

[fol. 46] (h) Taking the position with persons, firms, or corporations engaged in the manufacture of any kind of aluminum goods that if they attempt to enlarge or increase any of their industries, or engage in enterprises that are or will be competitive with defendant, or with the business of any firm or corporation in which defendant is financially interested, such persons, firms, or corporations will for

that reason be unable to procure their supply of material from defendant or any of the companies in which it is financially interested.

(10) That the United States may have such other and further equitable relief as the nature of the case may require and this honorable court may deem proper in the premises.

To the end, therefore, that the United States may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it a writ of subpœna, directed to said defendant, Aluminum Company of America, commanding it to appear herein and answer the allegations contained in the foregoing petition, but not under oath (answer under oath being expressly waived), and abide by and perform such orders and decree as the court may make in the premises.

John H. Jordan, United States Attorney for the Western District of Pennsylvania. George W. Wickersham, Attorney General. James A. Fowler, Assistant to the Attorney General. William T. Chantland, Special Assistant to the Attorney General.

[fol. 47] IN UNITED STATES DISTRICT COURT

ANSWER—Filed June 1, 1912

To the Honorable, the Judges of said Court:

The Aluminum Company of America, the defendant, now and at all times saving and reserving unto itself all benefit and advantage of exception to the many errors, uncertainties, imperfections and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as the defendant is advised it is material for it to make answer to, answering, says:

I

The averments of the first paragraph of the bill are admitted, with this qualification, that the true date of the change of name of the defendant company was January 1, 1907.

II

Defendant admits that it is now and has been for several years engaged in interstate trade and commerce in crude and semi-finished aluminum and in the various manufactured products of aluminum, and in bauxite and alumina, raw materials necessary to the manufacture of aluminum.

All the other averments contained in the second paragraph of the bill are denied. The defendant avers that it is not now violating and has not in the past violated the provisions of the Act of Congress passed July 2, 1890, entitled: "An Act to protect trade and commerce against unlawful restraints and monopolies," and that it does not now and [fol. 48] has not in the past conducted its business under or pursuant to any contracts, combinations or conspiracies in restraint of trade and commerce among the several States of the United States and with foreign countries in any respect or to any extent whatsoever, or that it is attempting to monopolize or has monopolized the whole or any part of said trade or commerce.

III

The statement of facts contained in the third paragraph of the bill under the heading, "A. Aluminum," as therein stated are denied.

The facts are: The metal aluminum was discovered about the year 1827, but was never manufactured in commercial quantities, nor could it be manufactured at a cost that justified its use for commercial purposes, until the methods were invented which were adopted by the defendant company and put into actual use at its works. In or about the year 1886, Charles M. Hall made an invention of and applied for a patent on a process for the manufacture of aluminum by which he was able to produce aluminum in an improved method at a reasonable cost and in commercial quantities. A patent thereon was granted to Hall on April 2, 1889. The Hall inventions and patents covered a novel method in that they contemplated the introduction into a bath made up of a double fluoride of aluminum, such as cryolite, of another compound of aluminum, namely alumina (oxide of aluminum), which it was discovered by Mr. Hall was highly solu- [fol. 49] ble in a bath such as cryolite. Mr. Hall discovered that after the alumina was put into solution in the fused bath of cryolite the alumina would be preferentially acted

upon by the electric current and the aluminum contained in the alumina be deposited before the electrolysis acted upon the cryolite bath itself. Thus the cryolite bath would in a sense be a constant medium of solution. As to the method of fusing the bath consisting of a double fluoride of aluminum contemplated by his process, Mr. Hall's patent makes no mention.

As a matter of fact Mr. Hall in his experiments used fire heat for fusion, but when commercial work was started by the defendant under the Hall patents in Pittsburgh in 1888 and the size of the apparatus and the amount of electric current gradually increased as the business developed, it was found that the electricity necessarily used in the Hall process for electrolysis inevitably produced sufficient heat to maintain fusion and consequently the defendant abandoned the use of fire for supplemental heat and used only electricity to fuse the bath. Neither Hall nor the defendant thought that fusion by electricity was sufficiently novel to be patented since they conceived it to be a well-known principle.

In 1883 one Bradley applied for a patent covering in general fusion by electricity. The Bradley patent did not disclose a process for making aluminum but its claims merely covered what was later on contended by defendant and others to be a well-known and unpatentable fact, namely, that baths such as Hall used would be fused by electricity. Hall's patent disclosed a practicable and hitherto totally [fol. 50] unknown method of making aluminum, while Bradley's patent merely covered a general principle, which Hall used in common with other electro-metallurgical manufacturers who eventually had to buy rights under the Bradley process as did the defendant. Owing to the peculiarity of the United States patent laws, the Bradley patent which was applied for before Hall's application, was not granted until three years after Hall's patent was issued and consequently Bradley was not only fortunate enough to get the courts to sustain what was contended to be a patenting of a general principle, but was also fortunate enough to get a patent which due to its date of application was "prior" to Hall's patent but which outlived Hall's patent for three years.

The Cowles Electric Smelting & Aluminum Company, of Lockport, N. Y., which later became the owners, as assignees, of the Bradley patents, manufactured aluminum for about two years, from 1891 to 1893. The defendant filed

a bill in equity against the Cowles Company for infringement of the Hall patents, and it was found by the United States Court that the process used by that company did infringe the Hall patents and the Cowles Company were enjoined on or about January 23, 1893, from using the Hall patents and thereafter that company did not and could not make aluminum.

In May, 1897, the Cowles Company having obtained title to the Bradley patent brought suit against the defendant claiming that the method of fusion used by defendant in- [fol. 51] fringed the Bradley patent, and in 1903, the Circuit Court of Appeals for the Southern District of New York decided that the method of fusion used by the defendant company did infringe the Bradley patents, consequently it became necessary for the defendant to pay heavy damages for past infringement and to acquire a license and on the 31st day of October, 1903, the defendant and the Cowles Company entered into an agreement by which the defendant agreed to pay the Cowles Company royalties for the use of the Bradley patents until the same expired, which was in the year 1909. The Hall patents expired before that date, to wit, in 1906. Since 1909 there have been no patents which covered the process used by the defendant, and any one who desired to enter into the business has been free to use the process and inventions covered by the Hall and Bradley patents.

The defendant company was chartered in September, 1888, in the State of Pennsylvania under the name of the Pittsburgh Reduction Company for the purposes set forth in its charter. It acquired the Hall patents and undertook to make them a commercial success by reducing and smelting the ore containing the metal aluminum and it subsequently embarked in the business of converting aluminum into finished or semi-finished shapes for commercial use so as to procure a market for said metal. At the time that defendant embarked in the business aluminum had never been used for any commercial purposes; the cost of producing the same had been so high as to prohibit such use and it [fol. 52] was necessary for defendant, in order to make a success of its business, not only to devise the mechanical means and carry on the experiments necessary to make the manufacture of aluminum on a commercial scale practical and to cheapen the cost thereof so that it could be used commercially, but also to exploit the use of the metal, to discover

the various ways in which it could be utilized, to manufacture the articles themselves, and to induce the public to utilize them. The history of the aluminum industry in the United States is the history of the defendant company. No other corporation or individual in the United States has ever manufactured any substantial amount of aluminum nor done any substantial pioneer work in its utilization. In so far as other persons or corporations are now engaged in the United States in the manufacture of aluminum they are simply fabricating the metal along lines which had been exploited and developed and the demand for which had been created by the defendant before they went into the business.

At the time the defendant company entered into the business of manufacturing aluminum the price thereof was $5 per pound. In the year 1903 (the date when the defendant company acquired the Bradley patent), it produced in the United States over 6,600,000 pounds and its subsidiary corporation, the Northern Aluminum Company, which manufactures and operates in the Dominion of Canada, manufactured over 1,700,000 pounds. In the year 1908, which was the last year when the defendant company had any patent protection, it produced 10,679,372 pounds and the Northern Aluminum Company produced 972,146 pounds. In 1911 [fol. 53] the defendant company manufactured in the United States 38,395,784 pounds and the Northern Aluminum Company 9,679,981 pounds.

During the time that the defendant has been engaged in the manufacture of aluminum it has constantly decreased the cost of manufacture, and with the decrease in the cost the market price of aluminum in the United States has not only been correspondingly lowered, but the decrease in the price has been greater than the decrease in cost of manufacture. For example, in 1903 the market price of aluminum was about thirty-three cents per pound. In 1908 the price was twenty-eight cents a pound, a reduction of four cents per pound or approximately thirteen per cent. During this period defendant's cost was reduced only five per cent. The general public enjoyed a reduction of thirteen per cent. on the price of aluminum when the cost of manufacture was only reduced five per cent. By the year 1910 the price of aluminum had been reduced to twenty-one cents per pound or a reduction of approximately thirty-six and one-third per cent. Defendant's cost was reduced from 1903 to 1910 only about thirty-one per cent., so that the public enjoyed a

higher reduction in the market price of aluminum than the defendant did in its cost price, and this has been consistently true from the beginning of defendant's operations down to the present time.

It is not true that the demand for aluminum has increased chiefly along the four lines mentioned in this paragraph of the bill. For example, the increased consumption of [fol. 54] aluminum in the manufacture of steel at present as compared with the consumption of ten years ago is greater than the increase in the wire or cable business or in the novelty business, and the increase in the consumption of aluminum in other lines, based upon its affinity for oxygen, such, for example, as in the manufacture of thermit and in the reduction of vanadium, has been proportionately greater than in the lines mentioned.

"B. Bauxite and Alumina." The statements contained under this heading in the third paragraph of the bill are denied, except that bauxite is found in extensive natural deposits. Bauxite as it exists in the natural deposits does contain various percentages of alumina and the amount of percentage of the other mineral substances in bauxite does vary, but it is not true that the better grades are required for the manufacture of alumina and the inferior grades are used for the manufacture of alum. The fact is the converse is true, the better grades being required for the making of alum; a more inferior grade is used for making alumina than that used to manufacture alum. The better grades of American bauxites which are being quarried at the present time seem to be the white bauxite, so called because they are more free from iron and consequently whiter in color, and the presence of iron in bauxite is the greatest objection to its use in the manufacture of alum. It is not so much the quality of bauxite as the amount of iron which it contains which determines its value in the manufacture of alum. As a general statement, however, it is true that the better grades of bauxite are used for alum and the inferior grades [fol. 55] can be used for making aluminum. After a point of inferiority is reached, marked by the failure of the bauxite to contain fifty per cent. of alumina, bauxite is under present conditions scarcely valuable for the manufacture of either aluminum or alum.

It is not true that at the time the defendant company engaged in the business of the manufacturing of aluminum and for some time thereafter the bauxite deposits of America

were owned and controlled by many independent and competing companies in the sense in which that language is used in the bill. There is not and never has been any substantial demand for bauxite in the United States except for the manufacture of aluminum, alum and artificial abrasives; the only other market in this country has been in the manufacture of fire brick and the consumption of bauxite for said purpose has been exceedingly small. There has been no substantial amount of aluminum manufactured in the United States except by the defendant company, consequently, nearly all the demand for bauxite to be used in manufacturing aluminum has been caused by the defendant's requirements, which have naturally been drawn from the bauxite deposits owned by the defendant company.

The manufacturers of alum have used a considerable quantity of alumina, which has also been largely produced from quarries which they own or in which they were interested, and the only use of bauxite in the manufacture of abrasives has been by the Norton Company and has been supplied either from quarries owned or controlled by it or [fol. 56] by the defendant from its quarries. Several individuals and corporations, perhaps ten or twelve, have at various times quarried and attempted to market bauxite and gone out of business solely because there was no demand for bauxite which justified their continuing the business.

As the business of the defendant company grew it became necessary for it to acquire deposits of bauxite and to quarry and refine the same. This it has done by purchasing bauxite deposits from various individuals owning the lands containing the same, who were principally farmers who used the land for agricultural purposes, and also by acquiring some corporations which held bauxite lands in the United States. Defendant's purchases have been solely with a view to obtaining an adequate supply for itself and its present ownership of bauxite lands does not exceed the reasonable requirements of the defendant's business. The defendant has also used large amounts of alumina which it has purchased from the Pennsylvania Salt Company which has been manufactured largely from foreign bauxite imported into the United States by the Pennsylvania Salt Company. There are very large deposits of bauxite in foreign countries and the same is being quarried and sold in large quantities by many persons in foreign countries. Either foreign or domestic bauxite can be used with equal facility in the manu-

facture of alumina and there always has been a full supply of bauxite in the American market produced from both domestic and foreign quarries sufficient to supply at satisfactory prices all the users of bauxite in the United States.

[fol. 57] IV

The statements of fact contained in that portion of the fourth paragraph of the bill under the heading "A. Bauxite," are denied. There has never been any complete exploration for or exploitation of American bauxite. The amount of bauxite that exists in the United States is entirely unknown. The demand for the same has been extremely limited and it always has been, and is now, possible for any one to acquire lands containing bauxite in adequate quantities in the United States. Neither defendant company nor any one else knows what proportion defendant owns of the present known or existing deposits of bauxite in United States or Canada, but the statement in the bill that the defendant owns and controls more than 90 per cent of all the known deposits of bauxite in the United States and Canada, is not only untrue but ridiculous and absurd. There are known to be many considerable deposits of bauxite in Arkansas and Georgia, not owned or controlled by the defendant, which are of such character that aluminum can be manufactured therefrom in commercial quantities and sold in competition with importations from abroad.

Prior to 1905, the defendant company owned bauxite rights in lands and quarried the same. With the growth of defendant's business and its increased requirements it became necessary and expedient for it to obtain additional supplies, and in or about the year 1905, it purchased what was known as the General Bauxite Company largely through the good offices of the General Chemical Company, [fol. 58] which was a minority stockholder in said company. There were at the time four stockholders and none of them held a majority of the stock. It is not true that this property was acquired "by squeezing out the minority stockholders who desired to continue independent." On the contrary, the business of the company had never been profitable and its stockholders preferred to accept the proposition to purchase made by the defendant company rather than continue the business.

In the year 1909, by reason of the enlargement of defendant's business it again became necessary for it to obtain additional supplies of bauxite, and it purchased in said year the Republic Mining & Manufacturing Company. It is not true that at that time the Republic Company "possessed the largest portion of the then remaining outstanding bauxite supply in America available for aluminum manufacture." The Republic Company owned very little Arkansas bauxite, and the holdings of that company were especially adapted to the manufacture of alum, and its chief business had always been to sell bauxite to the alum trade and so far as its deposits had any special adaptability to any particular trade it was to the alum trade.

The National Bauxite Company is and always has been an entirely independent miner of bauxite from its own properties. It first engaged in business in the year 1906 and is at present the third largest producer in the United States. The bauxite that it mines is well adapted for use in the making of aluminum, and the only reason that its output has been used entirely in the manufacture of alum and [fol. 59] chemicals and has not been used for the purpose of making aluminum, is that the defendant company, which is the only substantial manufacturer of aluminum in the United States, owns its own bauxite. If any person should desire to manufacture aluminum in the United States he could purchase from the National Bauxite Company, an entirely independent concern, bauxite adapted for the purpose and in adequate quantities.

The General Chemical Company, the Norton Company and the Pennsylvania Salt Manufacturing Company have never handled bauxite in any such sense as the word is used in the fourth paragraph of the bill.

The Pennsylvania Salt Manufacturing Company owns no bauxite lands of any kind anywhere, nor does it mine or produce any bauxite; it does now and always has purchased bauxite both abroad and in this country for use at its own manufactory.

The General Chemical Company owns no lands containing bauxite anywhere, neither does it quarry or produce any bauxite; it has no interest in the bauxite business, except as a purchaser of bauxite for use in its business, which is the manufacture of alum.

The Norton Company does not now, and never did, own any lands containing bauxite, except the forty-acre tract

hereinafter referred to, nor quarry any bauxite. Its only use for or interest in bauxite is as a user of bauxite in its business, which is the manufacture of alundum.

In so far as the contracts between defendant company and the said three corporations are concerned, which are [fol. 60] more particularly referred to in the later paragraphs of the bill and of this answer, the same are perfectly legitimate and innocuous, so far as the public are concerned. Neither the purpose nor effect of the acquisition by defendant of its bauxite properties or of the agreements and contracts with the three companies above mentioned was to monopolize the raw material in the United States used in the manufacture of aluminum, nor to perpetuate defendant's monopoly of such manufacture in the United States, nor to unlawfully restrain and monopolize the interstate and foreign trade therein. On the contrary, the only purpose that the defendant had in view was to acquire an adequate supply of bauxite for its own needs so that it should be able to supply the public with the aluminum which it desired to purchase, and none of these acts has had the effect of deterring or hindering any person who desired so to do from embarking in the manufacture of aluminum in the United States. There are many deposits in the United States of bauxite not owned or controlled by the defendant company which could be secured by any person desiring to go into the aluminum business or which, without doubt could and would be developed by others if there were a market for their product, such as would be created by any American manufacturer of aluminum who is willing to put up with the irregularity of the American bauxite; and if such prospective manufacturer of aluminum desired to purchase foreign bauxite there is a large and adequate amount of such bauxite of the best quality for [fol. 61] use in the manufacture of aluminum that can be purchased either directly from the persons quarrying the same abroad or from many well-known dealers both in the United States and abroad.

The statement of facts contained in the fourth paragraph of the bill under the heading "B. Alumina," are denied, except as herein expressly admitted.

It is true that the only persons now refining bauxite into alumina in the United States in large quantities are the Aluminum Ore Company, the Pennsylvania Salt Manufacturing Company and the Merrimac Chemical Company.

The Aluminum Ore Company is simply a subsidiary organization of the defendant company, was organized by the defendant company, and no one else ever had any interest therein. All its stock is owned by the defendant company and it is, in truth, simply a department of the defendant company's business. The plant, the title to which is now vested in the Aluminum Ore Company, was originally owned and operated directly by the defendant company and the conditions at said plant are in no way different now from what they were when the defendant company operated the same directly. It is not true that defendant refines at this plant 75 per cent of the total amount of bauxite converted into alumina in the United States. It does refine at this plant the larger part of the alumina now used by it and some additional small amounts which it sells to the trade, the primary purpose of the plant being to produce alumina for defendant's own uses.

[fol. 62] So far as what is known as the Beyer patent process is concerned, the said patents have no relevancy to the present situation. They expired in 1905 and the process may be used freely by anyone without the payment of any royalties. The process is equally applicable to the refining of either domestic or foreign bauxite, but it never was essential to the manufacture of alumina from either foreign or domestic bauxite. The fact is that the defendant conducted its business and manufactured alumina from domestic bauxite for years without using the Beyer process, and practically all of the alumina which has ever been imported into the United States has been manufactured from foreign bauxite without the use of the Beyer process. The defendant is now using the so-called Beyer process exclusively in refining domestic bauxite, and the Pennsylvania Salt Manufacturing Company and the Merrimac Chemical Company use the same process in refining foreign bauxite. These Beyer patents had expired before the contract of January 1, 1907, with the Pennsylvania Salt Manufacturing Company, referred to in the bill, was executed. While the Merrimac Chemical Company granted the right to the Pennsylvania Salt Manufacturing Company to operate under the Beyer patents in the United States, defendant is advised that the Merrimac Company reserved the right to itself to use said invention and, in any event, said patents had expired and any person was at liberty to use the said patents at the time the contract between the Penn-

sylvania Salt Manufacturing Company and defendant was entered into.

[fol. 63] The Merrimac Chemical Company manufactured alumina for its own use, and for any one else who cared to use it, for several years and still manufactures the same, but the absence of any market for alumina has reduced its manufacture practically to the supply of its own immediate needs, and for this purpose it is to-day operating a Beyer process plant near Boston, Mass. There is no reason why to-day the Merrimac Chemical Company could not supply alumina to any concern desiring to use it for the manufacture of aluminum, or could not have done so during many years past. It has always been a source of supply for alumina, and for several years has been advertising foreign bauxite especially suited for the manufacture of aluminum, but it seems to have been unable to induce any one to enter the field of aluminum manufacture, notwithstanding the fact that it stands ready to supply either bauxite or alumina.

The contracts between the defendant and the Pennsylvania Salt Manufacturing Company and the Norton Company are more fully referred to in other paragraphs of the bill and of this answer.

The statements of fact contained in the fourth paragraph of the bill under the heading "I. Aluminum Cooking Utensils" (other than that there are several separate, independent and competing companies that have at various times engaged in the manufacture of stamped and spun cooking utensils from aluminum and that the stock of the United States Aluminum Company and of the Northern Aluminum Company is owned by defendant) are denied. The defendant has never dealt with any of the manufac-
[fol. 64] turers of aluminum cooking utensils in an arbitrary, discriminatory or unfair way. Neither is the defendant the sole available source of supply of the raw materials, out of which said aluminum cooking utensils are made; neither has it discriminated either as to price, quality and conditions in favor of its own subsidiary corporations, the United States Aluminum Company and the Northern Aluminum Company, nor in favor of the Cooking Utensils Company, in which the defendant is a minority stockholder, against any of the manufacturers of cooking utensils under similar circumstances and conditions. The defendant does not now and has not in the past unlawfully, substantially,

unduly or in any degree restrained or monopolized the interstate trade and commerce in cooking utensils. Many of the manufacturers of aluminum cooking utensils in the United States, in which the defendant company has no financial interest, have been prosperous; in fact they have all been prosperous where they were efficiently managed, had an adequate capital, and manufactured utensils of good quality. It is true that in the early history of the cooking utensil business in the United States, many of the persons who undertook to manufacture the same produced aluminum cooking utensils of such poor quality that aluminum cooking utensils were being discredited and the market therefor largely destroyed, and it became necessary for the defendant company to embark in the manufacture of cooking utensils in order to produce manufactured articles which would be satisfactory to the consumers and thus develop a market for aluminum and the development of [fol. 65] the cooking utensil business in the United States has been largely, if not solely, the result of the defendant's efforts.

That part of the fourth paragraph of the bill under the heading "II. Aluminum Castings" (except the allegation that prior to 1909 there were a number of independent manufactures of aluminum castings throughout the United States and that the defendant is the owner and holder of 1,625 shares out of a total issue of 4,000 shares of common stock of the Aluminum Castings Company, a corporation organized under the laws of Ohio) are denied.

There were prior to the year 1909, have been since said year, and now are dozens of manufacturers of aluminum castings throughout the United States, all of who did and do, to a large extent, obtain their supply of aluminum from the defendant, although they also procure and use a very considerable amount of imported aluminum. Defendant believes that there were three corporations engaged in the manufacture of aluminum, located respectively at Cleveland, Detroit and Buffalo, in all of which one Allyne was largely interested, and at some date prior to 1909 the said Allyne consolidated said plants under the name of the Allyne Brass Foundry Company. The defendant was never a stockholder in said company and had no connection therewith other than the sale of aluminum to it. The defendant's subsidiary company, the United States Aluminum Com-

pany, was also engaged to some extent in the manufacture of aluminum castings at New Kensington, Pennsylvania. In the year 1909, a corporation was organized under the [fol. 66] laws of the State of Ohio, under the name of the Aluminum Castings Company. The United States Aluminum Company sold its plant at New Kensington to said corporation. It also subscribed to some of its capital stock and paid for the same in cash. The plants of the Allyne Brass Foundry Company, the Syracuse Aluminum and Bronze Company of Syracuse and the Eclipse Foundry Company of Detroit, were also sold to said corporation and said corporation has since conducted the business of manufacturing aluminum castings and sells the same to any persons that it is able to induce to purchase them. A large amount of said castings are sold to the automobile trade. The ownership by the defendant of stock in said corporation is simply a minority stock ownership and defendant made an agreement with the other stockholders (majority stockholders) that it would never purchase additional shares sufficient to give it a majority. It has never done so and the management of the company is entirely dominated and controlled by the majority stockholders. The ownership of stock by the defendant in said corporation does not constitute an incentive, to discriminate in the sale and supply of aluminum metal to the Aluminum Castings Company as against its competitors, neither did it have any such purpose or intent or declare the same as to discriminate in their favor by giving them preferential prices on their ingot, beginning with 2c and increasing the same to 5c per pound if necessary so as either to destroy the competitors or compel them to come into said combination, neither did defendant ever so discriminate. Such intent has not been and is not now being [fol. 67] carried out, neither have several or any competing castings companies been compelled to sell their business at a loss to said Castings Company. As defendant is advised and believes, only two persons or corporations who are engaged in the castings business, out of very many so engaged in the United States, have since sold their plants to said company, and the said plants were sold at a profit to the owners thereof and not at a loss and solely for the reason that the owners of said plants believed it to be to their financial interests to make the sales. Defendant does not control

and dictate the policy of the Aluminum Castings Company, neither is it the only profitable source of supply of the aluminum ingot in the United States. On the contrary, the Aluminum Castings Company purchases large quantities of imported aluminum, as do many of the other manufacturers of aluminum castings. The purpose of the formation of the Aluminum Castings Company, in so far as the defendant company participated therein, was to improve the character of the castings manufactured and furnish an adequate supply of the same to the public who desired to purchase the same, and the result of the formation of the said company has been that the character of the castings manufactured has been improved and it has been possible to furnish an adequate supply of castings to the persons and corporations desiring to use the same and has largely developed and increased the aluminum castings business in the United States and trade and commerce therein. In no respect has the defendant discriminated against the other manufacturers of [fol. 68] castings under similar circumstances and conditions.

The averments of the fourth paragraph of the petition under the heading "3. Aluminum Goods and Novelties" except as herein expressly admitted are denied. Defendant is not the sole available source of supply for said company of raw materials at reasonable rates, nor is the defendant in control of the policy of the said company. The defendant owns about 31 per cent. of the capital stock of said corporation and the said corporation is managed and conducted in an entirely independent manner by the majority stockholders. The defendant does not furnish crude or semi-finished aluminum to said company at any unduly preferential rates, nor at rates that enable the said company to underbid its competitors to whatever extent desired. Neither were the prices that have been made, made for the purpose of compelling competitors to lose their contracts or lose their business, or do their business without any profit, or compel them to sell or combine with defendant or to abandon the field of manufacture entirely, neither have they had such effect. In so far as any preferential prices have been granted to the Aluminum Goods Manufacturing Company as compared with others engaged in the business, they have been justified because of the relative amount it has respectively consumed and such as were required to meet competition with foreign aluminum. It is a fact that several of

the defendant's customers receive prices as low and lower than the prices paid by the Aluminum Goods Company. The sole purpose of the defendant in becoming interested in [fol. 69] the Aluminum Goods Manufacturing Company was to improve the quality of the goods manufactured and increase the quantity thereof and develop and extend the interstate trade and commerce of the United States in said articles, and this has been the effect of defendant's participation in said business. The business of manufacturing aluminum goods and novelties is prosperous and many other persons and corporations other than the Aluminum Goods Company are engaged in said business and since the formation of said company no competitor has gone out of business nor sold to nor combined with the Aluminum Goods Company or the defendant. There is no foundation of fact for the allegation in the bill that the Aluminum Goods Manufacturing Company is intending to monopolize or that it will obtain a complete monopoly of the aluminum interstate and foreign trade and commerce which is being conducted in aluminum goods and novelties. On the contrary, the business being done in said lines by other persons is large and prosperous and constantly increasing in volume.

V

The averments in the fifth paragraph of the bill as therein stated are denied. It is true that on or about the 25th day of September, 1908, the Northern Aluminum Company, Limited, a corporation of the Dominion of Canada, entered into an agreement with the Societe Anonyme Pour L'Industrie De L' Aluminum of Neuhausen and that the second, fourth and fifth paragraphs of the agreement are correctly [fol. 70] quoted in the fifth paragraph of the bill. While it is true that the Neuhausen Company has the largest output of any one European company engaged in the manufacture of aluminum, their position is not a dominant one as they only manufacture about 20 per cent of the aluminum produced outside of the United States. It is true that the agreement became effective on the first day of October, 1908, said agreement, however, was terminated on the 17th day of August, 1911, and has not since been and is not now in force or effect. At the time the said agreement was entered into the Northern Aluminum Company was manufacturing aluminum in the Province of Quebec in the Dominion of Canada and was anxious to extend its business and the

Neuhausen Company was manufacturing aluminum in Switzerland and was anxious to extend its business. The aluminum business of the world is highly competitive. There were at the time the said contract was entered into and are now seven corporations or firms in France, two in England, two in Norway, one in Italy and one in Switzerland (other than the Neuhausen Company) engaged in the manufacture of aluminum, and in order to provide for the extension of the business of the Northern Aluminum Company and the Neuhausen Company in foreign countries along economical lines, which was required by the highly competitive nature of the business, and to eliminate the cost of establishing and maintaining unnecessary branch houses the agreement provided that during its continuance the parties should work together in harmony and manage [fol. 71] the sales of and each act as agent for the other in certain foreign countries.

It was therefore provided in the agreement that the sales in the American market (which was defined as North and South America, with the exception of the United States but including West India, Hawaii and Philippine Islands) and in the market of Great Britain and its English speaking colonies, should be managed by the Northern Aluminum Company; and the markets of the rest of the world should be managed by the Neuhausen Company and the sales made by the two companies should be divided as follows: In the American market 25% to the Neuhausen Company and 75% to the Northern Aluminum Company; on the continent of Europe, excluding Great Britain, 25% to the Northern Aluminum Company and 75% to the Neuhausen Company; the rest of the world, 50% to the Northern Aluminum Company and 50% to the Neuhausen Company. At the time of entering into the agreement it was understood by both parties that the Northern Aluminum Company did not contemplate making any sales to the governments of Germany, Switzerland and Austria-Hungary and that these markets had been supplied by the Neuhausen Company and also that the Neuhausen Company did not contemplate making any sales in the United States and that the market in the United States was being supplied by the Aluminum Company of America, which company owned all the stock in the Northern Aluminum Company. It was therefore provided in the interest of harmony and in order to prevent

[fol. 72] possible disputes and misunderstandings that the Northern Aluminum Company would not make any sales to the Swiss, German or Hungarian governments and that the Neuhausen Company would not make any sales within the United States. This course was further advisable because the contract contemplated the most economical selling of aluminum for the two companies and had one company been allowed to sell in the territory of the other confusion among the respective agents would have been so great that the purpose of the agreement would have entirely failed. This agreement was not made for the purpose, neither did it have the effect, of making any illegal restraint upon the trade or commerce of aluminum among the several states and with foreign countries nor to build up nor continue any alleged monopoly of the same. The companies and firms manufacturing aluminum outside of the United States at the time said contract was entered into had a producing capacity of upwards of 100,000,000 pounds per annum and the total consumption of the world outside of the United States was about 50,000,000 pounds per annum. The surplus capacity of the foreign companies other than the Neuhausen Company greatly exceeded the demand for importation into the United States and said agreement in no way tended to increase the price of aluminum abroad, on the other hand it directly tended to decrease the same by causing a substantial and active competition between the Northern Aluminum Company and the Neuhausen Company and all the other manufacturers of aluminum in Europe. Said other manufacturers had a surplus capacity much [fol. 73] larger than sufficient to supply the needs of the United States for imported aluminum and did export from Europe and import into the United States large quantities of aluminum during the years when this agreement was in force. Said importations in one year, to wit the year ending June 30, 1910, amounted to 6,300,000 pounds.

VI

It is true that on or about the 25th day of July, 1905, the defendant entered into a contract with the General Chemical Company, and that shortly thereafter the General Chemical Company entered into a contract with the General Bauxite Company, and that the extracts from said contracts contained in the sixth paragraph of the bill are

correct. The other allegations contained in the sixth paragraph of the bill are denied. The facts are that prior to the execution of the contract between the defendant and the General Chemical Company, bearing date the 25th day of July, 1905, it was necessary and advisable for the defendant company to acquire additional bauxite lands to provide for its present uses and make a reasonable and legitimate provision for its prospective future uses, and it undertook to partially accomplish this by acquiring the General Bauxite Company, which was the owner of a considerable quantity of bauxite lands. At that time the General Chemical Company was the owner of a minority interest in the capital stock of the said General Bauxite Company. The interest of the General Chemical Company in the said General Bauxite Company was to obtain a supply of bauxite for [fol. 74] its own use in the manufacture of alum. The General Chemical Company was not then, is not now, and never has been engaged in the manufacture of aluminum, or interested in any way in the aluminum business. Neither was the General Bauxite Company at that time selling to any person any bauxite, which was used in the manufacture of aluminum. The General Chemical Company was willing to sell its interest in the General Bauxite Company to defendant, provided a provision was made whereby it would secure to itself a supply of bauxite sufficient for its use in the manufacture of alum, and the Aluminum Company, for the purpose of acquiring the other bauxite holdings of the General Bauxite Company for its use, was willing to purchase the property subject to an agreement to supply the General Chemical Company with bauxite for use in the manufacture of alum, but for no other purpose, as defendant desired to acquire the rest of the bauxite owned by the General Bauxite Company for its own use.

Thereafter the contracts referred to in the sixth paragraph of the bill were entered into, and the provisions referred to were inserted therein solely and only for the purposes hereinbefore set forth. In so far as they provided for any restriction whatsoever upon the sale of bauxite by the General Chemical Company for the purpose of conversion into aluminum or for any other use than for the manufacture of alum, alum salts, aluminum sulphate or alumina hydrate for alum and its compounds, they constituted an extremely limited and immaterial restriction upon the pos- [fol. 75] sible future business of the General Chemical Com-

pany, and one that was necessary for the protection of the defendant company. They were not made for the purpose and never had the effect of illegally, or to any extent, restraining interstate trade and commerce in bauxite, alumina for the manufacture of aluminum, and aluminum, or to illegally or in any degree preserve and maintain defendant's alleged monopoly in bauxite and alumina for the manufacture of aluminum, and the trade and commerce therein in the United States. Neither were they made for the purpose, nor did they have the effect of preventing any producer or prospective producer of aluminum from acquiring bauxite or alumina for the manufacture of aluminum from the General Chemical Company, inasmuch as said company never owned and does not now own any bauxite or manufacture any alumina for any purpose. The Department of Justice of the United States suggested to the defendant some months before the bill in this case was filed that these provisions in the contracts were thought by said department to be objectionable, and they were thereupon by mutual consent of the defendant and General Chemical Company abrogated and are not now in force or effect.

VII

In the early part of the year 1909 it became necessary for the defendant company, in order to provide for its present and probable future uses, to acquire additional bauxite lands. At that time there was a certain corporation [fol. 76] known as the Republic Mining & Manufacturing Company, which owned bauxite properties. The capital stock of the Republic Mining & Manufacturing Company was owned largely by the Norton Company. Said Norton Company was engaged in the business of manufacturing and selling abrasives and used bauxite for the manufacture of abrasives in its said business. The said Norton Company was only willing to part with its interests in the Republic Company after having a conveyance made to the Norton Company by the Republic Company of a forty-acre tract of land in order to assure a supply of bauxite for its own use, and at the same time was willing to covenant with the Aluminum Company that it would not use said Aluminum in competition with the Aluminum Company. This was the reason of the insertion in the contract of the 30th day of April, 1909, of the tenth and

eighteenth sections. Neither the purpose nor the effect of the agreement referred to was to restrain trade in bauxite for the manufacture of aluminum nor of preventing any other producer or prospective producer of aluminum except the defendant from acquiring bauxite for aluminum from said Norton Company; neither did it tend to strengthen the defendant in its alleged monopoly of the aluminum industry and of the interstate and foreign trade and commerce therein. The Norton Company was not engaged in the business of mining and selling bauxite, but, as hereinbefore set forth, in the manufacture of abrasives. It never either sold or contemplated selling bauxite to anybody and the said contract between the defendant and the Norton [fol. 77] Company had no effect whatsoever upon the ability of such persons, if any, as might desire to purchase bauxite for use in the manufacture of aluminum so to do. The allegations in the seventh paragraph of the bill, except as hereinbefore admitted, are denied. The Department of Justice of the United States suggested to the defendant some months before the bill in this case was filed that these provisions in the contract were deemed by the department to be objectionable and Norton Company was thereupon advised by the defendant that it (Norton Company) would be released from all obligation to comply with said terms of said contract.

VIII

The allegations of the eighth paragraph of the bill, except as herein expressly admitted, are denied.

When the defendant first commenced the manufacture of alumina, the same was made from cryolite. The deposits of cryolite are located in Greenland and are a monopoly of the Danish Government, and the Pennsylvania Salt Manufacturing Company is and has been for many years back the sole agent in the United States for the sale of cryolite. When it was discovered that aluminum could be more economically manufactured from alumina made from bauxite, the defendant company began the purchase of alumina made from bauxite from the Pennsylvania Salt Manufacturing Company and the Pennsylvania Salt Manufacturing Company from time to time extended its plant so as to be able to supply the requirements of the defendant. [fol. 78] When the defendant itself acquired bauxite lands

and began the refining of the same into alumina, it still continued to purchase considerable quantities of alumina from the Pennsylvania Salt Manufacturing Company, and about the first day of January, 1907, it entered into a further contract for the purchase of a quantity of alumina from the Pennsylvania Salt Manufacturing Company, said contract extending over a period of years. In order to furnish such supply, it was necessary for the Pennsylvania Salt Manufacturing Company to extend its plan, and the defendant disclosed to and placed at the disposition of the Pennsylvania Salt Manufacturing Company all the methods and designs and engineering experience acquired by it in the manufacture of alumina, and also the services of its engineers in the designing and construction and extension of the plant of the Pennsylvania Salt Manufacturing Company, and there was a provision placed in said contract that the Pennsylvania Salt Manufacturing Company should not enter into the manufacture of alumina for the manufacture of aluminum for others as long as the agreement remained in force. The Pennsylvania Salt Manufacturing Company never had been engaged in the manufacture of aluminum, and had never sold alumina to any person who used the same for the manufacture of alumina other than defendant. Said provision of the contract was entirely legal and proper; the Pennsylvania Salt Manufacturing Company was getting advantage of the knowledge and appliances and engineering and business experience of defendant in the manufacture of alumina which the de-[fol. 79] fendant was under no obligation to furnish in a way that could be used in competition with it. It is denied that this agreement was ratified, explained or enlarged by the letter of the Pennsylvania Salt Manufacturing Company, which is referred to in the eighth paragraph of the bill. Said letter was a unilateral statement made by the Pennsylvania Salt Manufacturing Company and was not a part of said contract.

It is not true that the purpose and effect of this agreement and ratification was illegally to restrain the interstate and foreign trade and commerce in aluminum by preventing the Pennsylvania Salt Manufacturing Company from entering into the field of the manufacture of and trade and commerce in aluminum, or that it tended illegally to maintain defendant's alleged existing monopoly in said trade and commerce.

On the contrary, the purpose and effect of this agreement was to enlarge the interstate and foreign commerce in aluminum by procuring the Pennsylvania Salt Manufacturing Company to make a large increase in the capacity of its plant and very greatly enlarge the amount of alumina which could be manufactured by said company. Said provision in said contract was some time ago abrogated by mutual consent and is not now in force or effect.

IX

The averments of the ninth paragraph of the bill as therein stated are denied. On or about November 16th, 1910, the defendant purchased from Kruttschnitt and Coleman 720 shares of stock of the Aluminum Goods Manufac- [fol. 80] turing Company. They agreed that if the defendant would purchase the stock in said company they would not subsequently depreciate the value of the shares by organizing or going into a competitive business for the term of twenty years in any part of the United States east of Denver, and in order to protect the good will of the Aluminum Goods Manufacturing Company and the value of the stock therein, which the defendant was purchasing, the provision was inserted in the agreement which is quoted in the ninth paragraph of the bill. The purpose and effect of this provision was solely a legitimate protection of the good will and property of the Aluminum Goods Manufacturing Company. It did not have the effect of restraining trade and commerce in the aluminum industry in the United States. The provision contained in this contract was of such indirect and minor importance to defendant that as soon as it was suggested by the Department of Justice of the United States that they regarded said provision as objectionable, the defendant at once voluntarily released Kruttschnitt and Coleman from said provision of the contract, and the same is not now and has not been in effect since said date.

X

All the allegations of the tenth paragraph of the bill are denied. The history of the upbuilding of the aluminum industry in the United States and the enormous development of said business from a point when it was practically nothing, when the defendant went into the business, until the [fol. 81] present time, when it exceeds forty million pounds

per year, is the history of the defendant company, and it has continuously and consistently, during all of said period, done everything in its power to upbuild and extend said business. It is the sole manufacturer of aluminum in substantial quantities in the United States, and it has done everything that was in its power to extend the uses to which the metal could be applied, and it has used its best efforts and its capital in the fabrication of aluminum into the finished products in which the public could be induced to use the same. It has also used its best endeavor to furnish unmanufactured and partially manufactured aluminum and supply the same at a reasonable price and upon reasonable terms to all persons who desired to go into the business of fabricating materials from aluminum and selling the finished product on the market, and it has encouraged other persons to embark in said business, and has at all times given to such persons the advantage of its advice, experience and knowledge. It has never required those who purchased from it to deal exclusively with it, and it has never discriminated against any persons engaged in such business or in any way attempted to compel any persons who engaged in said business to sell their properties to it or to combine with it, or to sell their properties to or combine with any company in which the defendant was interested. On the few occasions where the defendant has itself purchased the business of parties who were engaged in the fabrication of aluminum, or solicited companies in which it had a financial interest so to do, it has done so at the solicitation of the par-
[fol. 82] ties desirous to sell, and with a view to saving them from financial loss. Said sales have been largely made by persons who, by reason of insufficient capital, or lack of experience, or bad management, became involved in financial difficulties, and all the acts of the defendant company have been for the purpose of enlarging the trade and commerce in aluminum and of improving the quality, and cheapening the price of the articles made therefrom.

XI

The allegations of the eleventh paragraph of the bill are denied. There is now and always has been keen competition in the bauxite business in the United States, and the only reason why the defendant consumes substantially 100% of the bauxite used in the United States in the manufacture of aluminum, and manufactures substantially 100%

of the crude aluminum manufactured in the United States, is because there is nobody else who manufactures any substantial quantity of aluminum in the United States. There is keen competition in all forms of aluminum, in ingot and semi-finished forms, due to large importations from abroad, in the cooking utensil business, due to a large number of domestic manufacturers and heavy importations of foreign cooking utensils; and in aluminum castings and aluminum goods and novelties, between a number of large and prosperous concerns which engage in said business. Defendant's interest in the said business (castings and aluminum goods and novelties) is extremely limited, it being only a minority [fol. 83] stockholder in two out of the many corporations engaged therein. It is utterly beyond the power of the defendant to exclude practically all competitors, actual and prospective, from the interstate and foreign trade and commerce in aluminum goods, it never has done so and it has no purpose or intent so to do. It has not the power to monopolize said trade, nor has it ever done so, nor has it any purpose or intent so to do. On the contrary, the defendant's purpose and intent has at all times been to build up and increase the said business and, so far as it has the power to encourage persons to engage in said business, and it has always treated all persons in the business alike under similar circumstances and conditions, and discriminated against none.

XII

The averments of the twelfth paragraph of the bill are denied. The purpose of the defendant in the conduct of its business from the beginning has been to promote the trade and commerce in the United States in aluminum and articles manufactured therefrom. In so far as the defendant's processes were protected by letters patent which it lawfully acquired, it had the intent and purpose of securing the lawful monopoly in the processes which were granted by said letters patent. Said patented processes never related to the fabrication of aluminum, and the defendant has never desired or attempted to acquire a monopoly of said business or to destroy or prevent competition therein. It did not acquire its bauxite holdings for the purpose of ob- [fol. 84] taining a monopoly in said business, nor did its acquisition have such effect. It acquired said holdings simply for its own legitimate needs in the manufacture of alumi-

num, and any person who desires to go into the aluminum business can easily acquire adequate supplies of bauxite. The formation of the United States Aluminum Company and the Aluminum Cooking Utensil Company was not for any such purpose, nor did they have any such effect, but said companies were formed merely for the purpose of operating various branches of defendant's business, which it had itself built up. Its interest as a minority stockholder in the Aluminum Castings Company and the Aluminum Goods Manufacturing Company was not secured for any such purpose, nor did or could it have any such effect, Said companies are operated by the majority stockholders, entirely independent of any control or dictation of defendant, and in fact said corporations are users of foreign aluminum as well as of aluminum purchased from the defendant.

XIII

The averments contained in the thirteenth paragraph of the bill except as herein stated are denied. At the time of the incorporation of the defendant company its capital was fixed at a nominal amount. In so far as any of the capitalization of $1,000,000 as fixed in 1889 was issued in the payment for the Hall patents, defendant avers that the patents were of a value at least as great as the capital stock for which they were issued. The rest of the original capitalization of $1,000,000 was issued for cash. Additional amounts [fol. 85] of stock were from time to time sold for cash and the amount so sold for cash greatly exceeds the amount stated in the bill. It is not true that the earnings derived from the aluminum business anywhere approximate the amount stated in the plaintiff's bill. On the contrary, a very large amount of the profits derived by the defendant has been from the appreciation of the value of properties acquired by it. The defendant company has always paid very small dividends. Its average dividend paid for the past 23 years has been 2.66 per cent. upon the capital invested and the amount of profits made by the defendant has varied greatly from year to year. Some years it has been as much as 17 per cent. of the value of the property, generally it has been less than that and sometimes there has been a deficit. While it is true that in some years the earnings on that part of defendant's capital employed in the United States have been greater than on that part of its capital employed

abroad, in some years the profits on the foreign business were greater than on the domestic business. On the average there has been no substantial difference between the profits derived from the capital engaged in the foreign and that engaged in the domestic business. It is not true that the prices now charged for aluminum are unreasonable in proportion to its cost. On the contrary, the profits only amount to a fair and reasonable amount on the business done. The defendant does not under any circumstances require its consumers to resell at a fixed price; they sell anything purchased from defendant at any price that they please.

[fol. 86] The defendant admits that it owns all of the capital stock of the Northern Aluminum Co., Ltd., the Bauxite & Northern Railway, the United States Aluminum Co., the Aluminum Ore Co., the American Bauxite Co., the Aluminum Cooking Utensil Co., the St. Lawrence Securities Co. and the Electric Carbon Co., and that the Aluminum Cooking Utensil Co. owns no property and is simply a selling company for the disposal of the products of the United States Aluminum Co.

XIV

All the allegations of the fourteenth paragraph of the bill are denied. Defendant expressly denies that it is now violating or has ever violated the Act of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies." Defendant avers that all its holdings of bauxite are proper and legal and necessary for its business, and that it does not now possess what is called in this paragraph of the bill a "practical monopoly" in said raw materials. To no extent and in no manner has it any monopoly of raw materials. While it is true that defendant is the only person in the United States that produces aluminum in any substantial quantity, there is no reason why any other person possessed of the necessary capital and willing to run the risks of the business, should not do so. The provisions which existed in the contracts with the General Chemical Company, the Norton Company and the Pennsylvania Salt Manufacturing Company, which were in force and effect until the United States [fol. 87] Government suggested that the same should be abrogated (and which have been abrogated as hereinbefore set forth) never were unlawful nor were they made for the

purpose, nor did they have the effect of preventing said companies from entering into the manufacture of aluminum. None of said companies ever manufactured aluminum or had any desire so to do. The General Chemical Company and the Pennsylvania Salt Manufacturing Company are companies whose business is the manufacture of chemicals and the Norton Company is a company whose sole business is the manufacture of abrasives. The so-called A. J. A. G. agreement, during the time when it was in existence, did not restrict or affect importation into or exportation from the United States of aluminum, and was not made with the intent and purpose, nor did it have the effect in any way, of restraining the foreign trade and commerce of the United States in aluminum. The agreement with Kruttschnitt & Coleman during the period when it was in existence, had no effect upon the manufacture of aluminum goods in the United States.

None of the other acts referred to in the fourteenth paragraph of the bill were ever committed by the defendant nor were any of the corporations referred to organized with the intent and purpose of preventing, nor did their organization prevent, any other person from entering into any branch of the aluminum industry; nor were they made with the intent, nor did they have the effect, of preserving and maintaining defendant's alleged monopoly in interstate trade and commerce in aluminum and aluminum goods. In point of fact ever since the expiration of the patents re- [fol. 88] ferred to in the bill the entire aluminum industry has been and is now open to all who may desire to go into it and there is active competition in said business, and any benefit which the public derives from competition has already accrued to and is now being enjoyed by the public and there is no monopoly existing in the defendant or any other person in the trade and commerce in aluminum or the raw materials from which it is produced. Defendant has already voluntarily, when suggested by the Government, cancelled all the contract provisions referred to in the bill to which the Government made objection. They all relate to rather immaterial matters which were of no substantial benefit to the defendant in its business and were inserted in said contracts rather as a matter of ordinary business prudence and in accordance with the ordinary custom of business men, than because they covered any points that were essential to defendant's business.

XV

It is admitted that defendant's principal place of business is in the Western District of Pennsylvania. The other allegations of the fifteenth paragraph of the bill are denied.

Wherefore defendant prays that it may be hence dismissed with its costs and charges in this behalf unjustly sustained.

Aluminum Company of America, by —— ——, Vice President. Gordon & Smith, Solicitors for Defendant.

[fol. 89] In United States District Court

Decree—Entered June 7, 1912

This cause coming on to be heard on this 7th day of June, 1912, before the Hon. James S. Young, District Judge, and the petitioner having appeared by its district attorney, John H. Jordan, and by Wm. T. Chatland, its special assistant to the Attorney General, and having moved the court for an injunction in accordance with the prayer of its petition, and it appearing to the court that the allegations of the petition state a cause of action against the defendant under the provisions of the act of July 2, 1890, known as the Anti-Trust Act, that it has jurisdiction of the subject matter, and that the defendant has been regularly served with proper process, and has appeared in open court, by George B. Gordon, its counsel, and has given its consent to the entering and rendition of the following decree:

Now, therefore, it is ordered, adjudged, and decreed:

1. That sections 2, 4, and 5 of the agreement entered into as of date September 25, 1908, between the Societe Anonyme pour l'Industrie de l'Aluminum of Neuhausen and the Northern Aluminum Company (Ltd.), acting on behalf of the defendant corporation, as follows, to wit:

2. The N. A. Co. agree not to knowingly sell aluminum directly or indirectly in the European market.

The A. J. A. G. agree not to knowingly sell aluminum directly or indirectly in the American market.

[fol. 90] 4. The total deliveries to be made by the two companies shall be divided as follows:

European market, 75 per cent to A. J. A. G., 25 per cent to N. A. Co.

American market, 25 per cent to A. J. A. G., 75 per cent to N. A. Co.

Common market, 50 per cent to A. J. A. G., 50 per cent to N. A. Co.

The Government sales to Switzerland, Germany, and Austria-Hungary are understood to be reserved to the A. J. A. G.

The sales in the U. S. A. are understood to be reserved to the Aluminum Company of America.

Accordingly the A. J. A. G. will not knowingly sell aluminum directly or indirectly to the U. S. A. and the N. A. Co. will not knowingly sell directly or indirectly to the Swiss, German, and Austria-Hungarian Governments.

5. The N. A. Co. engages that the Aluminum Company of America will respect the prohibitions hereby laid upon the N. A. Co.

be and the same are hereby declared null and void, and that the defendant Aluminum Company of America, and all its agents and representatives in whatever capacity, are hereby perpetually enjoined from directly or indirectly requiring the parties to said contract to abide by its terms, and defendant is further enjoined from either directly or indirectly entering into, through said Northern Aluminum Company, or any other person or corporation, and from making or aiding in making any agreement containing pro- [fol. 91] visions of the nature of those hereinbefore set out, in so far as they relate to the sale of aluminum in the United States, or its importation into or exportation from the United States, or any contract or agreement, either verbal or written, the purpose and effect of which would be to restrain the importation into the United States, from any part of the world, of aluminum, or alumina, or bauxite, or any other material from which aluminum can be manufactured, or to fix or illegally affect the prices of such aluminum, alumina, bauxite, or other material, when imported.

2. That the fourth and eighth paragraphs of the agreement entered into, under date of July 5, 1905, between the

defendant Aluminum Company of America, under its former name, Pittsburgh Reduction Company, and the General Chemical Company, a corporation, which paragraphs read as follows:

Fourth. Said Chemical Company further expressly covenants and agrees that it will not use or knowingly sell any of the bauxite sold to it by the said Bauxite Company hereunder, or any other bauxite, or the products thereof for the purpose of conversion into the metal aluminum, and that upon proof that any of said bauxite or products thereof have been put to any such use it will not make any further sales or deliveries to the purchaser thereof.

Eighth. It is understood and agreed that the bauxite sold hereunder by the said Bauxite Company to the said Chem-
[fol. 92] ical Company shall be used by the said Chemical Company and by companies under its control or whose stock is largely held by it, and by no other person or party, and only for the manufacture of alum, alum salts, alumina sulphate or alumina hydrate for alum and its compounds, and for no other purpose whatsoever—

be, and they are, hereby declared null and void and are stricken out of said contract; and that the fifth section of said contract which reads as follows:

Fifth. The said Reduction Company agrees to use its good offices in the interest of said Chemical Company so far as relates to promoting the trade of the latter in alum and alum products in the United States and in foreign countries; and said Chemical Company reciprocally undertakes and agrees to use its good offices in the interest of said Reduction Company so far as relates to promoting the metal business of the latter in the United States and in foreign countries—

in so far as it may be considered as an agreement upon the part of the General Chemical Company to antagonize the interests of the competitors of the defendant company, be and it is hereby declared to be null and void, and that defendant and all its agents and representatives be, and they are, hereby perpetually enjoined from in any manner, and to any extent, requiring an enforcement of said provisions, and from entering into or acting in pursuance of any contract or agreement the purpose and effect of

which would be to place any restraint upon the General [fol. 93] Chemical Company with reference to the right of said company to acquire and sell, or the quantity which it may acquire and sell, or the price at which it may acquire and sell any bauxite, alumina or aluminum of which it may become the owner by purchase, manufacture, or otherwise.

3. That the tenth and eighteenth sections of the contract entered into under date of April 20, 1909, between the defendant Aluminum Company of America and the Norton Company, which sections read as follows, to wit:

Tenth. Norton Company may mine and use bauxite from the said forty-acre tract of bauxite land referred to in paragraph D above, which shall be used for the purpose of manufacturing alundum, and may mine and sell from the said property bauxite or other mineral taken therefrom for any purpose except for the manufacture of aluminum, and Norton Company shall not sell or otherwise dispose of said forty-acre tract except subject to the above restrictions.

Eighteenth. Norton Company shall not at any time during the continuance of this agreement use or sell any of the bauxite contained on the said forty-acre tract described in paragraph D above, or any other bauxite, or the products thereof, hereafter acquired by Norton Company, in the United States of America or the Dominion of Canada for the purpose of conversion into aluminum—

[fol. 94] and all other parts of said contract, in so far as they restrain or seek to restrain the Norton Company from exercising its free and independent will in using and disposing of the bauxite which it may receive under the provisions of said contract, or any other bauxite which it may obtain, be and the same are hereby declared null and void and are abrogated; and that the defendant, and its officers and agents, be perpetually enjoined from in any manner or to any extent enforcing or requiring recognition by the Norton Company of such provisions, and from hereafter entering into any contract with said Norton Company, the purpose and effect of which would be to restrain said Norton Company in the disposition of any bauxite which may be obtained from any source, or of any alumina or aluminum which it may manufacture from such bauxite, or may otherwise obtain.

4. That the following clause in a contract between defendant and the Pennsylvania Salt Manufacturing Company, to wit:

The Pennsylvania Salt Manufacturing Company agrees not to enter into the manufacture of aluminum as long as this agreement is in force—

and the ratification and extension of said clause contained in a letter from the Pennsylvania Salt Manufacturing Company to defendant, dated January 1, 1907, be and the same are hereby declared null and void; and that defendant Aluminum Company of America and its officers and agents be and they are hereby perpetually enjoined hereafter [fol. 95] from in any manner or to any extent enforcing or relying upon said clause and its ratification, and from entering into any contract with said Pennsylvania Salt Manufacturing Company, the purpose and effect of which would be to restrain said Pennsylvania Salt Manufacturing Company from freely making any disposition that it may see proper, and at any price it may deem proper, of any bauxite, alumina or aluminum, the ownership of which it may acquire from any source.

5. That that part of the agreement entered into as of date November 16, 1910, by defendant Aluminum Company of America and Gustave A. Kruttschnitt, of Newark, New Jersey, and James C. Coleman, of Newark, New Jersey, which provides that—

As part consideration for the execution of this agreement by Aluminum Company, Kruttschnitt and Coleman hereby severally agree that for the period of twenty years from the date hereof, in that part of the United States east of a north and south line through Denver, Colorado, neither Kruttschnitt nor Coleman will directly or indirectly engage or become interested in the manufacture or fabrication or sale of aluminum or any article made substantially of aluminum, provided that either or both the said Kruttschnitt and Coleman may be employed by or become interested in the Aluminum Company or said Aluminum Goods Manufacturing Company without committing a breach of this contract—

[fol. 96] in so far as it constitutes a restraint upon said Kruttschnitt and Coleman from freely engaging in any

part or branch of the aluminum business, be and the same is hereby declared to be null and void, and that the defendant, and its officers, agents, and representatives be and they are hereby perpetually enjoined from entering into a contract with said Kruttschnitt or Coleman or with any other individual, firm or corporation of a like or similar character to the above-quoted provisions of said contract, except as the same may be a lawful incident to the purchase of good will.

6. That the defendant and its officers, agents, and representatives be and they are hereby perpetually enjoined from entering into a contract with any other individual, firm, or corporation of a like or similar character to the above-quoted provisions in the contracts between the Aluminum Company of America and the General Chemical Company, between said Aluminum Company and the Norton Company, between said Aluminum Company and the Pennsylvania Salt Manufacturing Company, and between said Aluminum Company and Kruttschnitt and Coleman, or either of them, and from entering into or participating in any combination or agreement the purpose or effect of which is to restrict or control the output or the prices of aluminum or any material from which aluminum is directly or indirectly manufactured, and from making any contract or agreement for the purpose of or the effect of which would be to restrain commerce in bauxite, alumina, or aluminum, or to prevent any other person, firm or corporation from [fol. 97] or to hinder him or it in obtaining a supply of either bauxite, alumina or aluminum of a good quality in the open market in free and fair and open competition, and from themselves entering into, or compelling or inducing, under any pretext, or in any manner whatsoever, the making of any contract between any persons, firms, or corporations engaged in any branch of the business of manufacturing aluminum goods the purpose or effect of which would be to fix or regulate the prices of any of their raw or manufactured products in sale or resale.

7. To prevent all undue discrimination upon the part of defendant and its officers and agents, or upon the part of any firm or corporation in whose business defendant owns or hereafter acquires a financial interest by stock ownership or otherwise, against any competitor of defendant, and thus to prevent the unlawful acquisition by defendant of

a monopoly in any branch of manufacturing from crude or semifinished aluminum, defendant and its officers, agents, and representatives, are hereby perpetually enjoined from committing the following acts, to wit:

(a) Combining either by stock ownership or otherwise with any one or more manufacturers for the purpose or with the effect of controlling or restraining the output of any product manufactured from aluminum, or fixing or controlling the price thereof.

(b) Delaying shipments of material to any competitor without reasonable notice and cause, or refusing to ship or [fol. 98] ceasing to continue shipments of crude or semi-finished aluminum to a competitor on contracts or orders placed, and particularly on partially filled orders, without any reasonable cause and without giving notice of same, or purposely delaying bills of lading on material shipped to any competitor, or in any other manner making it impossible or difficult for such competitor promptly to obtain the material upon its arrival, or from furnishing known defective material.

(c) Charging higher prices for crude or semi-finished aluminum from any competitor than are charged at the same time under like or similar conditions from any of the companies in which defendant is financially interested, or charging or demanding higher prices for any kind of crude or semi-finished aluminum from any competitor for the purpose or which under like or similar conditions will have the effect of discriminating against such manufacturers in bidding on proposals or contracts to the advantage of said defendant or any company in which it is financially interested.

(d) Refusing to sell crude or semifinished aluminum to prospective competitors in any branch of the manufacturing aluminum goods industry on like terms and conditions of sale, under like or similar circumstances, as defendant sells such crude or semifinished aluminum to any firm or corporation engaged in similar business in which defendant is financially interested.

(e) Requiring, as a condition precedent to selling crude or semifinished aluminum to a competitor, that such com- [fol. 99] petitor divulge to defendant the terms which such

competitor proposes to make in order to secure the work in which the desired aluminum is to be used, and from imparting to any one the purpose or purposes for which said competitor is intending to use said metal.

(f) Requiring or compelling the making of agreements by competitors not to engage in any line of business nor to supply any special order in competition with defendant or with any company in which it is financially interested as a condition precedent to the procurement of aluminum metal.

(g) Representing or intimating to competitors that unless they dealt with defendant or with companies in which defendant has a financial interest for their supply of metal such competitor will not be able to obtain a sufficient supply of metal or obtain it at a price that will permit them to engage in competition with defendant or with companies in which defendant is financially interested; or in like manner representing or intimating to consumers of aluminum in any stage of manufacture that unless they deal with defendant or with a company in which it is financially interested, their supply of material or manufactured products will be cut off for that reason.

(h) Taking the position with persons, firms, or corporations engaged in the manufacture of any kind of aluminum goods that if they attempt to enlarge or increase any of their industries or engage in enterprises that are or will be competitive with defendant or with the business of any [fol. 100] firm or corporation in which defendant is financially interested such persons, firms, or corporations will for that reason be unable to procure their supply of material from defendant or any of the companies in which it is financially interested.

The term "competitor," as used above, shall be construed to mean all persons, firms, or corporations engaged in or who are actually desiring or about to engage in the manufacture of any kind of products or goods from crude or semifinished aluminum, whose business is not controlled or not subject to be controlled by defendant, its officers and agents, either by virtue of ownership of all or a part of the capital stock of such concerns or through any other form or device of financial interest.

Provided, however, that nothing contained in this decree shall be construed to prevent or restrain the lawful promotion of the aluminum industry in the United States.

Provided, further, that nothing herein contained shall obligate defendants to furnish crude aluminum to those who are not its regular customers to the disadvantage of those who are whenever the supply of crude aluminum is insufficient to enable defendant to furnish crude aluminum to all persons who desire to purchase from defendant, but this proviso shall not relieve defendant from its obligation to perform all its contract obligations, and neither shall this proviso, under the conditions of insufficient supply of crude aluminum referred to, be or constitute a permission to defendant to supply such crude aluminum to its regular [fol. 101] customers mentioned with the purpose and effect of enabling defendant or its regular customers, under such existing conditions, to take away the trade and contracts of competitors.

Provided, further, that nothing in this decree shall prevent defendant from making special prices and terms for the purpose of inducing the larger use of aluminum, either in a new use or as a substitute for other metals or materials.

Provided, further, that nothing in this decree shall prevent the acquisition by defendant of any monopoly lawfully included in any grant of patent right.

Provided, further, that the raising by defendant of prices on crude or semifinished aluminum to any company which it owns or controls or in which it has a financial interest, regardless of market conditions, and for the mere purpose of doing likewise to competitors while avoiding the appearance of discrimination, shall be a violation of the letter and spirit of this decree.

This decree having been agreed to and entered upon the assumption that the defendant, Aluminum Company of America, has a substantial monopoly of the production and sale of aluminum in the United States, it is further provided that whenever it shall appear to the court that substantial competition has arisen, either in the production or sale of aluminum in the United States, and that this decree in any part thereof works substantial injustice to defendant, this decree may be modified upon petition to the court [fol. 102] after notice and hearing on the merits, provided that such applications shall not be made oftener than once every three years.

It is further ordered that the defendants pay the costs of suit to be taxed.

Per Curiam, James S. Young, Judge.

Form of decree approved. George W. Wickersham, Atty. Genl. June 6, 1912.

[fol. 103] IN UNITED STATES DISTRICT COURT

PETITION OF DEFENDANT FOR MODIFICATION OF DECREE—Filed October 25, 1922

To the Honorable, the Judges of Said Court:

Aluminum Company of America, the defendant in this case, respectfully represents:—

(1) On the 7th day of June, 1912, a decree was entered in this case, wherein and whereby the defendant was enjoined and restrained from doing and performing certain things as, by reference to said decree, will more fully and at length appear. Said decree provides that, whenever it shall appear to the court that substantial competition has arisen either in the production or sale of aluminum in the United States and that the decree in any part thereof works substantial injustice to the defendant, the decree may be modified upon petition to the court.

(2) Since the decree was entered in this case, there have been very material changes in the aluminum industry in the United States and abroad. Soon after the signing of the armistice in November, 1918, the aluminum industry in the United States and particularly the smelting of aluminum became depressed, importations of pig and ingot aluminum and a fabricated aluminum from abroad became extremely heavy and competition in the sale of aluminum in the United States has been not only substantial, but great and keen.

(3) Aluminum is manufactured by electric smelting, and in order to produce it economically it has been found necessary to use water power as the generating force. During [fol. 104] the past few years the demand for water power in the United States has very greatly increased, and the price or value of water power has been constantly increas-

ing. The present value of water power in the eastern part of the United States, where the defendant's plants are located and where the raw material for its production and the market for the sale of aluminum products exists, has very greatly increased, so that it is impossible to smelt aluminum in the United States at anything approximating the same cost as when the decree in this case was entered.

(4) The defendant has won and maintained an important position in the world's aluminum industry, which it fears it can no longer maintain on account of the manufacturing advantages enjoyed by foreign producers and on account of the difficulty of increasing its own production in the United States due to water power conditions, just referred to. Your defendant desires, therefore, to begin the smelting of aluminum under European conditions, where water power exists in large quantities at favorable prices which are not likely to be constantly increasing on account of local demands. Norway fulfills these conditions. It is necessary for the continuance of its business that the defendant should make investments and secure rights which will enable it to go into the business of smelting aluminum in Norway or to procure aluminum smelted in Norway on favorable terms. Under the laws of Norway it is not possible for persons who are not citizens of Norway to obtain concessions for water power in Norway; and furthermore, all or practically all of the available water powers in Nor- [fol. 105] way, even though yet undeveloped, are already in the hands of Norwegian concessionaires.

(5) The defendant has been in negotiation with the owners of the stock of two Norwegian corporations which have plants available for the manufacture of aluminum, and which either own water power or have contracts for water power with power companies in Norway. These companies not only have considerable power development at the present time but are capable of development to a very much greater capacity in the future. These corporations are the Aktieselskabet Hoyangfaldene Norsk Aluminum Co. and the Norske Nitrid Company. The negotiations have been conducted with a view to acquiring or participating in the advantages of the Norway hydro-electric situation by means of acquiring a stock-ownership in said corporations or an interest in their properties or power contracts. The negotiations with the Aktieselskabet Hoyang-

faldene Norsk Aluminum Co. have proceeded to a point where definite propositions have been exchanged by the two corporations, the substance of which is that a new corporation be organized to take over the aluminum plant and property incidental thereto of the Aktieselskabet Hoyangfaldene Norsk Aluminum Co., together with the necessary water power contracts, and that the stock in said new company be acquired one-half by the Aluminum Company of America and one-half by the Aktieselskabet Hoyangfaldene Norsk Aluminum Co., and that the new corporation be managed by a board of seven directors of whom four shall be nominated by the Aluminum Company of America and [fol. 106] and three by the Aktieselskabet Hoyangfaldene Norsk Aluminum Co. The negotiations with the Norske Nitrid Company are for the present in abeyance, but your petitioner hopes that it will be possible in the near future to make some arrangement whereby it may secure some interest in said company or its plant.

(6) Your petitioner is of the opinion that the said proposed action, as hereinbefore set forth, and the acquiring of said interest in the aluminum business in Norway do not in any way violate the provisions of the decree heretofore entered by your Honorable Court, although it may seem that some of the very general language contained in the decree, particularly in section 7, paragraph (a), section 6, and section 1 prohibits it. The provision referred to in section 7, paragraph (a), is as follows:

"Combining either by stock ownership or otherwise with any one or more manufacturers for the purpose or with the effect of controlling or restraining the output of any product manufactured from aluminum, or fixing or controlling the price thereof."

The provision in section 6 is as follows:

"* * * from entering into or participating in any combination or agreement the purpose or effect of which is to restrict or control the output or the prices of aluminum or any material from which aluminum is directly or indirectly manufactured and from making any contract or agreement for the purpose of or the effect of which would be to restrain commerce in bauxite, alumina or aluminum [fol. 107] or to prevent any other person, firm or corpora-

tion from or to hinder him or it in obtaining a supply of either bauxite, alumina or aluminum of a good quality in the open market, in free and fair and open competition, and from themselves entering into, or compelling or inducing, under any pretext, or in any manner whatsoever, the making of any contract between any persons, firms, or corporations, engaged in any branch of the business of manufacturing aluminum goods the purpose or effect of which would be to fix or regulate the prices of any of their raw or manufactured products in sale or resale."

And the provision in section 1 is as follows:

"* * * defendant is further enjoined from either directly or indirectly entering into, through said Northern Aluminum Company, or any other person or corporation, and from making or aiding in making any agreement containing provisions of the nature of those hereinbefore set out, in so far as they relate to the sale of aluminum in the United States, or its importation into or exportation from the United States, or any contract or agreement, either verbal or written, the purpose and effect of which would be to restrain the importation into the United States, from any part of the world of aluminum, or alumina, or bauxite, or any other material from which aluminum can be manufactured, or to fix or illegal-y affect the price of such aluminum, alumina, bauxite, or other material, when imported."

[fol. 108] Wherefore, the defendant respectfully prays that the decree heretofore entered in this case on the 7th day of June, 1912, be modified so that nothing therein contained shall be considered or construed to enjoin or restrain the defendant, the Aluminum Company of America, or any company or companies subsidiary to, or affiliated with it, from, at once or from time to time, acquiring, holding, exercising all rights of ownership in and disposing of any interest or interests, either controlling or otherwise, in the capital stock or securities of the companies mentioned in the 5th paragraph of the petition, or either of them, that is to say, the Aktieselskabet Hoyangfaldene Norsk Aluminum Co. and the Norske-Nitrid Company, or any properties, plants, power rights, or contracts of said companies now or hereafter acquired by them or either of them, or in any corporation or corporations or unincorporated associa-

tions, companies or partnerships which may at any time be organized or formed to take over the whole, or any part, of the capital stock, securities, rights or properties of said corporations or either of them.

And your petitioner will ever pray.

Aluminum Company of America, by Gordon & Smith, It Solicitors.

[fol. 109] *Duly sworn to by A. V. Davis. Jurat omitted in printing.*

[fol. 110] IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL DECREE—Filed October 25, 1922

And now, to-wit, October 25th, 1922, this case came on for further hearing on the petition of the Aluminum Company of America for a modification of the original decree entered in this case on the 7th day of June, 1912, and upon the waiver of notice of said petition and consent to the entrance of this decree by the United States of America, the plaintiff, expressed by the Honorable the Attorney General of the United States, it is hereby ordered and decreed that the said decree entered in this case on the 7th day of June, 1912, shall be and the same is hereby modified so that nothing therein contained shall be considered or construed to enjoin or restrain the defendant, the Aluminum Company of America or any company or companies subsidiary to or affiliated with it from, at once or from time to time, acquiring, holding, exercising all rights of ownership in, and disposing of, any interest or interests, either controlling or otherwise, in the capital stock or securities of the companies mentioned in the 5th paragraph of the petition, or either of them, that is to say, the Aktieselskabet Hoyangfaldene Norsk Aluminum Co. and the Norsk-Nitrid Company, or in any properties, plants, power rights, or contracts of said companies now or hereafter acquired by them, or either of them, or in any corporation or corporations or unincorporated associations, companies or partnerships which may at any time be organized or formed to take over the whole, or any part, of the capital stock, secu-[fol. 111] rities, rights or properties of said corporations, or either of them.

Provided however, that this shall not be considered as an adjudication under the decree heretofore entered herein upon the question of the right of the defendant to own or acquire any interests or interest in, or ownership or control of any corporation or corporations, unincorporated associations, companies or partnerships, directly or indirectly, owning or controlling plants, properties or facilities for the production or manufacture of bauxite, alumina or aluminum in its crude, finished or other form, except the plants, properties and facilities of said Aktieselskabet Hoyangfaldene Norsk Aluminum Co. and the Norsk-Nitrid Company, but decision upon such question is hereby expressly reserved.

(Signed) W. H. S. Thomson, U. S. District Judge.

The Petitioner, the United States of America, appears herein by H. M. Daugherty, Attorney General of the United States, and hereby consents that the foregoing order may be entered herein without further notice.

H. M. Daugherty, Attorney General of the United States.

[fol. 112] IN UNITED STATES DISTRICT COURT

PETITION OF ALUMINUM COMPANY OF AMERICA—Filed April 29, 1937

To the Honorable the Judges of the said Court:

Aluminum Company of America, defendant above named (hereinafter called "Aluminum Company"), files this its petition and says:

1. Aluminum Company is a corporation organized and existing under the laws of the State of Pennsylvania and is a citizen of said State and a resident of the City of Pittsburgh in the Western District of Pennsylvania. Aluminum Company's principal office is in the City of Pittsburgh, Pennsylvania, in which office its business is principally transacted and its books and records are kept.

2. On May 16, 1912, United States of America instituted the above entitled proceeding in equity (hereinafter referred to as the "first suit") against Aluminum Company by a petition filed in this Honorable Court at No. 159 No-

vember Term, 1912, in Equity. On June 1, 1912, Aluminum Company filed its answer. On June 7, 1912, upon motion of the United States of America, consented to by Aluminum Company, a decree of this Honorable Court (hereinafter referred to as the "consent decree") was entered in said proceeding by the Honorable James S. Young, United States District Judge. The said decree has never been appealed from and still remains in full force and effect as modified as hereinafter in this paragraph [fol. 113] stated. On October 25, 1922, Aluminum Company filed in said proceeding its petition to modify the consent decree so that nothing therein contained should be construed to enjoin or restrain it or any company or companies subsidiary to or affiliated with it from at once or from time to time acquiring, holding, exercising all rights of ownership in and disposing of any interest or interests, either controlling or otherwise, in the capital stock or securities of two Norwegian corporations therein mentioned or any properties, plants, power rights or contracts of said two corporations then or thereafter acquired by them or either of them, or in any corporation or corporations or unincorporated associations, companies or partnerships which may at any time be organized or formed to take over the whole or any part of the capital stock, securities, rights or properties of said two Norwegian corporations or either of them. On October 25, 1922, with the consent of the plaintiff acting by the then Attorney General of the United States, the consent decree was modified by a supplemental decree in accordance with the prayers of Aluminum Company's petition for modification.

3. On April 23, 1937, Homer S. Cummings, Attorney General of the United States, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Special Assistant to the Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, [fol. 114] United States Attorney, acting in their capacities as attorneys and agents of the United States of America, instituted in the District Court of the United States in the Southern District of New York a proceeding in equity, No. 85-73 in which the United States of America is plaintiff and Aluminum Company of America and others are defendants

by filing on said date in said court a petition, a copy of which is attached hereto.

The said proceeding in the District Court of the United States for the Southern District of New York is hereinafter referred to as the New York suit.

4. The subject matter and issues in the first suit and in the New York suit are identical.

5. The consent decree is binding upon both the United States of America and the Aluminum Company and by its terms it is binding also upon all the officers, agents and representatives of the Aluminum Company. The following 100% subsidiaries of Aluminum Company named as defendants in the New York suit, to-wit, the Aluminum Cooking Utensil Company, Aluminum Ore Company, Aluminum Seal Company, Alcoe Power Company, Limited, Alton and Southern Railroad, Bauxite and Northern Railway Company, Carolina Aluminum Company, Cedar Rapids Transmission Company, Limited, Franklin Fluorspar Company, Knoxville Power Company, Louisiana Terminal Company, Massena Securities Corporation, The Massena Terminal [fol. 115] Railroad Company, Nantahala Power and Light Company, Ocean Dominion Steamship Corporation, The Republic Mining and Manufacturing Company, The St. Lawrence River Power Company, St. Louis and Ohio River Railroad, Surinaamsche Bauxite Maatschappij and The United States Aluminum Company are agents and representatives of the Aluminum Company and are bound by the terms of the consent decree. The following named individual persons who are named as defendants in the New York suit are officers or directors of the Aluminum Company and are bound by the terms of the consent decree, viz., Arthur V. Davis, Roy A. Hunt, Edwin S. Fickes, George R. Gibbons, Robert E. Withers, C. B. Fox, Safford K. Colby, Winthrop C. Neilson, George J. Stanley, Irving W. Wilson, David K. E. Bruce, George H. Clapp, Richard K. Mellon, Paul J. Urquhart, J. R. D. Huston, C. L. Lycette, and J. J. Demskie. George G. Allen, named as a defendant in the New York suit, until recently has been a director of Aluminum Company and as such director was bound by the terms of the consent decree. Andrew W. Mellon, named as a defendant in the New York suit, was a director of Aluminum Company at the time of and for a period after the entry of

the consent decree and as such director was bound by the terms of the consent decree.

By its terms the consent decree enjoins and restrains the Aluminum Company, its officers, agents and representatives from performing any acts contrary thereto not only at the time it was entered and now but also in the future.

[fol. 116] 6. In the petition filed by the United States of America in the first suit, as will more fully appear by reference thereto, among other things it is charged substantially as follows:

That the Aluminum Company had been and was then violating the provisions of the Act of Congress passed July 2, 1890, commonly known as the Sherman Act, by making, and conducting its business under, certain contracts, combinations and conspiracies in restraint of trade and commerce among the several states of the United States and with foreign countries in bauxite, alumina, aluminum, both crude and semi-finished, and the manufactured products of aluminum; that the Aluminum Company was attempting to monopolize said trade and commerce and had monopolized a part thereof; that the action was brought by the United States of America to prevent and restrain the Aluminum Company and its officers and agents from further violating said Act in respect to said commerce (paragraph II);

That Aluminum Company or its subsidiary companies owns and controls more than 90% of all the known deposits of bauxite in the United States and Canada that is of such character that aluminum can be manufactured therefrom in commercial quantities and sold in competition with importations from abroad (paragraph IV);

That the Aluminum Company owns 37% of the capital stock of Aluminum Goods Manufacturing Company, a New Jersey corporation, and therefore furnished to the latter [fol. 117] aluminum at preferential rates for the purpose of hampering and interfering with competitors of the latter and that, unless the Aluminum Company is restrained therefrom, this will result in a monopoly in certain aluminum wares and aluminum novelties in the Aluminum Goods Manufacturing Company which monopoly will be dominated and controlled by the Aluminum Company (paragraph IV, c. 3). The Aluminum Company's ownership of stock in the Aluminum Goods Manufacturing Company and the fact

that two of the officers of the former are directors of the latter is alleged by the United States of America in the petition in the New York suit (paragraph 89) as an attempt by the Aluminum Company to restrain competition in aluminum cooking utensils and other fabricated products.

In the petition in the first suit it is further charged that the Aluminum Company made certain written contracts containing certain restrictive provisions illegally restraining and monopolizing trade and commerce in the United States, viz., (a) a contract made in 1908 with a Swiss or Neuhausen company of Europe designated as A. J. A. G.; (b) a contract made in 1905 with General Chemical Company; (c) a contract made in 1909 with Norton Company; (d) a contract made in 1907 with the Pennsylvania Salt Manufacturing Company; and (e) a contract made in 1910 with Kruttschnitt and Coleman (paragraphs V, VI, VII, VIII and IX). These are the same contracts which are re- [fol. 118] cited and complained of in the petition in the New York suit, paragraphs 56, 86, 88, 87 and 90.

In the petition in the first suit it is further charged that continuously from 1889 the Aluminum Company has made unfair price discriminations against independent manufacturers so that they were unable successfully to bid against or compete with the favored industries and has refused to sell aluminum, supplied inferior aluminum and delayed shipments to said independent manufacturers and has extracted information from said independent manufacturers as to prices bid by them on contracts sought by an allied company of Aluminum Company competing with said independent manufacturers and has coerced said independent manufacturers to buy aluminum exclusively from Aluminum Company by representing that their supply would otherwise be cut off (paragraph X). These acts are also recited and complained of in the petition in the New York suit, paragraph 100.

In the petition in the first suit it is further charged that, by the contracts, combinations and acts of Aluminum Company above described, Aluminum Company has eliminated nearly all competitors of consequence from the various branches of the aluminum industry in the United States moving in interstate trade and commerce; that by reason of the contracts and combinations aforesaid and Aluminum Company's ownership of the raw material and the aluminum manufactured therefrom, Aluminum Company can at

[fol. 119] will exclude practically all competitors, actual and prospective, from the interstate and foreign trade and commerce in aluminum goods and can itself continue to monopolize the same (paragraph XI);

That the contracts, agreements and various acts above described were made with the intent and purpose, on the part of Aluminum Company, to destroy all real and substantial competition in every branch of the aluminum industry in the United States and thus to restrain the interstate and foreign trade and commerce therein and to completely monopolize the same; that said intent has permeated Aluminum Company's business policies and shaped its business methods from its organization down to the present time (paragraph XII):

That the earnings and profits of Aluminum Company are unreasonable; that the prices charged by Aluminum Company for aluminum and its products are unreasonable in proportion to its cost; that Aluminum Company, through its controlled branches of the industry, continues frequently to charge unreasonably high prices and profits (paragraph XIII). The profits and prices of Aluminum Company are recited and complained of in the petition in the New York suit, paragraphs 41, 101.

In the petition in the first suit it is further set forth that, while plaintiff concedes that Aluminum Company's practical monopoly in both bauxite and the manufacture of aluminum in the United States which it held at the expiration of its [fol. 120] patents in the year 1909 was lawful, yet plaintiff alleges that the means above described by which Aluminum Company has sought to and actually has maintained that monopoly were and are unlawful; that the restrictive provisions in the written contracts above mentioned and the various acts and devices of Aluminum Company (referred to in Paragraph X of the petition) in preventing competition or harassing independent manufacturers and the various combinations in the petition described of those who were engaged independently in the various lines of manufacture of aluminum goods with companies whose policies are dominated by Aluminum Company and in which it has a very material financial interest were and are all unlawful because each and every one of said acts was committed, and said contracts were made, with the intent and purpose of preventing independent concerns from entering upon, acquiring or continuing to hold any material part of any

branch of the aluminum industry and with the further intent unlawfully to preserve and maintain Aluminum Company's monopoly in the interstate and foreign trade and commerce in aluminum goods; that, in order that the entire aluminum industry may be open to all who may desire to enter therein and that competition may arise and that the benefits of competition may accrue to the public and that interstate and foreign trade and commerce in aluminum metal and the raw materials from which it is produced and the goods into which it is manufactured may be wholly unrestrained and the monopoly therein be destroyed, the above described re- [fol. 121] strictive provisions of said written contracts should be cancelled and Aluminum Company restrained from enforcing same and that Aluminum Company should be enjoined and inhibited from entering into any further contracts of like or similar character and from purchasing or combining with any other independent concerns engaged in the aluminum industry and from committing each and every one of the acts hereinbefore particularly described or any other like or similar act with like intent or effect (paragraph XIV);

That the contracts, combinations and conspiracies unlawfully to restrain interstate and foreign trade and commerce in crude and semifinished aluminum and its raw materials and its manufactured products and to monopolize the said trade still exist and that Aluminum Company is engaged in carrying out the same within the Western District of Pennsylvania and that some of the acts complained of have been committed in said state and district and are now being there committed, in which said state and district Aluminum Company has its principal place of business (paragraph XV).

Wherefore, the United States of America in said petition in the first suit, among other things, prayed that it be adjudged that the Aluminum Company has entered into contracts, combinations and conspiracies and is now engaged in combinations and conspiracies and, in pursuance thereof is committing acts such as are denounced as illegal by the [fol. 122] Sherman Act and that Aluminum Company be perpetually enjoined from either directly or indirectly, by any scheme or artifice whatsoever through its officers, agents, employees or otherwise doing, or causing to be done, anything in pursuance or furtherance of such contracts, combi-

nations and conspiracies within the jurisdiction of the United States;

That it be adjudged that Aluminum Company, in violation of the Sherman Act, has attempted, and is now attempting, unlawfully to monopolize, and has unlawfully monopolized, a part of the interstate and foreign trade commerce in aluminum in its various forms, crude, semi-finished or fabricated, including the raw materials necessary in its manufacture, to-wit, bauxite and alumina, and that such attempted monopoly and monopoly have been accomplished by means or in pursuance of the acts, contracts, combinations and conspiracies in the petition alleged and that Aluminum Company be enjoined from either directly or indirectly, by any scheme or device through its officers, agents or employees or successors in interest continuing said unlawful attempts to monopolize and the monopolizing of any part of said trade and commerce;

That certain restrictive provisions of the written contracts hereinbefore mentioned which unlawfully restrain interstate and foreign commerce be declared null and void and that Aluminum Company and its officers, agents and representatives be perpetually enjoined from entering into [fol. 123] any contract with any other individual, firm or corporation of a character similar to or which contains provisions like those quoted therefrom in the petition;

That Aluminum Company be enjoined from "directly or indirectly entering into or participating in any combination or agreement, the purpose or effect of which is to restrict the output or control the markets and prices of aluminum or any material from which aluminum is directly or indirectly manufactured and from making any contract or agreement for the purpose of or the effect of which would be to restrain commerce in bauxite, alumina or aluminum or to prevent any other person, firm or corporation from or to hinder him or it in obtaining an ample supply of either bauxite for aluminum, alumina or aluminum of a good quality in the open market in free, fair and open competition at reasonable prices and from itself entering into or compelling or inducing, under any pretext or in any manner whatsoever, the making of any contract between any persons, firms, or corporations engaged in any branch of the business of manufacturing aluminum goods the purpose or effect of which would be to fix or maintain the sale or resale

prices of any of their crude, semifinished, or manufactured products.";

That to prevent the unlawful acquisition by Aluminum Company of a monopoly in any branch of manufacturing from crude or semi-finished aluminum, Aluminum Company and its officers, agents and representatives be perpetually enjoined from either directly or indirectly committing any [fol. 124] of the following acts, to-wit, "(a) combining either by stock ownership or otherwise with any one or more manufacturers for the purpose or with the effect of controlling or restraining the output of any product manufactured from aluminum or fixing or controlling the price thereof." The prayer continues by praying that the Aluminum Company, its officers, agents and representatives be perpetually enjoined and restrained from the various acts and devices preventing competition or harassing independent manufacturers referred to in paragraph X of the said petition;

That the plaintiff may have such other and further equitable relief as the nature of the case may require and as the court may deem proper.

7. Aluminum Company's answer in the first suit, as will more fully appear by reference thereto, denies nearly all of the averments of the petition of the United States of America in said suit.

8. The consent decree in the first suit, as will more fully appear by reference thereto, orders, adjudges and decrees, among other things, that the restrictive provisions in the following mentioned contracts made by Aluminum Company, viz., (a) a contract made in 1908 with the Swiss or Neuhausen Company designated as A. J. A. G., (b) a contract made in 1905 with General Chemical Company, (c) a contract made in 1909 with Norton Company, (d) a contract made in 1907 with the Pennsylvania Salt Manufacturing Company, and (e) a contract made in 1910 with Kruttschnitt [fol. 125] and Coleman be declared null and void. These restrictive provisions are recited in the consent decree and the said written contracts in which they occur are the same contracts mentioned in paragraphs V, VI, VII, VIII and IX of the petition in the first suit and are the same contracts which are recited and complained of in paragraphs 56, 86, 88, 87 and 90 of the petition of the United States of America in the New York suit.

The consent decree perpetually enjoins the Aluminum Company and its officers, agents and representatives from entering into a contract with any other individual, firm or corporation of a like or similar character to the above mentioned restrictive provisions in the said contracts.

The consent decree perpetually enjoins the Aluminum Company and its officers, agents and representatives "from entering into or participating in any combination or agreement the purpose or effect of which is to restrict or control the output or the prices of aluminum or any material from which aluminum is directly or indirectly manufactured, and from making any contract or agreement for the purpose of or the effect of which would be to restrain commerce in bauxite, alumina, or aluminum or to prevent any other person, firm or corporation from or to hinder him or it in obtaining a supply of either bauxite, alumina, or aluminum of a good quality in the open market in free and fair and open competition, and from themselves entering into, or compelling or inducing, under any pretext, or in any manner whatsoever, the making of any contract between any persons, firms, or corporations engaged in any branch of [fol. 126] the business of manufacturing aluminum goods the purpose or effect of which would be to fix or regulate the prices of any of their raw or manufactured products in sale or resale."

The consent decree contains also the following provisions: "To prevent all undue discrimination upon the part of defendant (Aluminum Company) and its officers and agents, or upon the part of any firm or corporation in whose business defendant (Aluminum Company) owns or hereafter acquires a financial interest by stock ownership or otherwise, against any competitor of defendant (Aluminum Company), and thus to prevent the unlawful acquisition by defendant (Aluminum Company) of a monopoly in any branch of manufacturing from crude or semi-finished aluminum, defendant (Aluminum Company) and its officers, agents, and representatives, are hereby perpetually enjoined from committing the following acts, to wit:

(a) Combining either by stock ownership or otherwise with any one or more manufacturers for the purpose or with the effect of controlling or restraining the output of any product manufactured from aluminum, or fixing or controlling the price thereof."; and the consent decree con-

tinues by likewise enjoining the Aluminum Company and its officers and representatives from the various acts and devices preventing competition or harassing independent manufacturers referred to in paragraph X of the petition and mentioned above in paragraph 6 of this petition of the Aluminum Company.

[fol. 127] So sweeping in its terms is the consent decree that it was deemed necessary to insert, and there was inserted, therein the following provision: "Provided, however, that nothing contained in this decree shall be construed to prevent or restrain the lawful promotion of the aluminum industry in the United States."

The consent decree contains also the following provisions: "This decree having been agreed to and entered upon the assumption that the defendant, Aluminum Company of America, has a substantial monopoly of the production and sale of aluminum in the United States, it is further provided that whenever it shall appear to the court that substantial competition has arisen, either in the production or sale of aluminum in the United States, and that this decree in any part thereof works substantial injustice to defendant (Aluminum Company), this decree may be modified upon petition to the court after notice and hearing on the merits, provided that such applications shall not be made oftener than once every three years."

9. If the United States of America is entitled to the relief prayed for in the New York suit, it can obtain the same upon proper application to this Honorable Court, in which the first suit and the consent decree were entered, this Court having full power to modify the consent decree by force of principles inherent in the jurisdiction of the chancery, a continuing decree of injunction directed to events to come being subject always to adaptation as events may shape the need.

[fol. 128] Because of the bringing of the first suit and the entry of the consent decree which, as amended as hereinbefore stated, is still in full force and effect and applies both to present and future acts, the United States of America has no right further to harass Aluminum Company and its 100% subsidiary companies and its present or former officers and directors hereinbefore named by bringing and maintaining the New York suit and thus subjecting them to the peril of two decrees existing at the same time in two

separate and independent courts affecting the same subject matter and issues.

The United States of America has no right further to harass Aluminum Company by requiring the latter to defend the New York suit at a place far distant from Aluminum Company's residence and principal office, which defense will require constant reference to Aluminum Company's books and records and the production of many of them at the trial and will further require many of the officers and employees of the Aluminum Company to depart from its principal office, where their duties are performed, to attend and assist at the trial in New York. By reason of these facts, all of which will be the inevitable result of requiring the Aluminum Company to defend the New York suit, the defense of said suit by the Aluminum Company will be hampered and interfered with and the business of the Aluminum Company will be seriously injured by requiring the removal of its books and records from its principal office to a distant point and the further necessity of having many of its officers and employees leave their duties [fol. 129] at its principal office to attend upon or assist in the trial in New York.

10. That the jurisdiction of this Court over the subject matter, and the parties aforementioned, having first attached and having been followed by its decree is complete and exclusive and such jurisdiction should be protected and preserved until the duty of this Court has been fully performed.

11. That unless enjoined and restrained by the temporary restraining order and the injunction of this Honorable Court, the above named Homer S. Cummings, Robert H. Jackson, Wendell Berge, Walter L. Rice, John W. Aiken, F. Gwyn Harper, Jr., N. A. Townsend, Jr., and Lamar Hardy, will prosecute the New York suit and the petitioner and its 100% subsidiary companies and its present or former officers and directors hereinbefore named will be compelled immediately to engage counsel to represent them in said suit, to enter their appearances promptly in said suit, to begin to prepare their defense to said suit, and to file their answers and make their defense in said suit.

12. That if the temporary restraining order of this Court is not issued forthwith and followed in due course with a

preliminary injunction and final injunction of this Court, the jurisdiction of this Court will not be protected but will be defeated and lost and it will be impossible for Aluminum Company and its 100% subsidiary companies and its present or former officers and directors hereinbefore named to [fol. 130] prevent the prosecution of the New York suit requiring them to appear and defend therein and submit to the jurisdiction of that court and thus subject them to the peril of two decrees existing at the same time in two separate and independent courts affecting the same subject matter and issues, and that, likewise, the Aluminum Company will be required to defend the New York suit with its defense hampered and restricted because the New York suit will be tried in a place far distant from the place of the principal office of the Aluminum Company where its books and records are and where its officers discharge their duties, and, in addition, the business of the Aluminum Company will be seriously injured by the removal of many of its books and records and many of its officers and employees to New York for the purpose of defending and assisting in the defense of the New York suit, and that for the reasons in this petition stated the Aluminum Company will suffer immediate and irreparable injury; and the threat of irreparable injury is so immediate that there is not time for petitioner to give notice of this proceeding.

Wherefore Aluminum Company is without an adequate remedy at law, is in need of such relief as can be granted only by a court of equity, and unless afforded equitable relief will suffer immediate and irreparable damage. Aluminum Company, therefore, prays your Honorable Court as follows:

(1) That the said Homer S. Cummings, as Attorney General of the United States, the said Robert H. Jackson, as [fol. 131] Assistant Attorney General of the United States, the said Wendell Berge, as Special Assistant to the Attorney General of the United States, the said Walter L. Rice, as Special Assistant to the Attorney General of the United States, the said John W. Aiken, as Special Assistant to the Attorney General of the United States, the said F. Gwyn Harper, Jr., as Special Attorney for the United States, the said N. A. Townsend, Jr., as Special Attorney for the United States, and the said Lamar Hardy, as United States Attorney in the Southern District of New York, be

made parties defendant to the said suit in equity in this Court at No. 159 November Term, 1912.

(2) That the said Homer S. Cummings, Robert H. Jackson, Wendell Berge, Walter L. Rice, John W. Aiken, F. Gwyn Harper, Jr., N. A. Townsend, Jr., and Lamar Hardy be required to make full, specific and direct answers to the averments of this petition.

(3) That by temporary restraining order to be followed in due course by preliminary injunction, to be made perpetual on final hearing, your Honorable Court shall enjoin and restrain the said Homer S. Cummings, Robert H. Jackson, Wendell Berge, Walter L. Rice, John W. Aiken, F. Gwyn Harper, Jr., N. A. Townsend, Jr., and Lamar Hardy, or any person under their authority or control, from prosecuting or proceeding in the New York suit against the Aluminum Company of America, the said Aluminum Cooking Utensil Company, Aluminum Ore Company, Aluminum Seal Company, Alcoa Power Company, Limited, Alton and Southern Railroad, Bauxite and North-
[fol. 132] ern Railway Company, Carolina Aluminum Company, Cedar Rapids Transmission Company, Limited, Franklin Fluorspar Company, Knoxville Power Company, Louisiana Terminal Company, Massena Securities Corporation, The Massena Terminal Railroad Company, Nantahala Power and Light Company, Ocean Dominion Steamship Corporation, The Republic Mining and Manufacturing Company, The St. Lawrence River Power Company, St. Louis and Ohio River Railroad, Surinaamsche Bauxite Maatschappij, The United States Aluminum Company, Arthur V. Davis, Roy A. Hunt, Edwin S. Fickes, George R. Gibbons, Robert E. Withers, C. B. Fox, Safford K. Colby, Winthrop C. Neilson, George J. Stanley, Irving W. Wilson, David K. E. Bruce, George H. Clapp, Richard K. Mellon, Paul J. Urquhart, J. R. D. Huston, C. L. Lycette, J. J. Demskie, George G. Allen and Andrew W. Mellon and from bringing in any court other than this Court any suit against Aluminum Company of America raising the same issues as those involved in the first suit heretofore brought in this Court and upon which this Court has passed judgment by the consent decree.

(4) That your Honorable Court shall grant such other and further relief not herein specifically prayed for as the nature of this proceeding may require and as the Court may deem proper.

(5) That writs of subpœna issue, directed to the said Homer S. Cummings, Robert H. Jackson, Wendell Berge, Walter L. Rice, John W. Aiken, F. Gwyn Harper, Jr., N. A. [fol. 133] Townsend, Jr., and Lamar Hardy commanding them and each of them to appear herein and to answer, under oath, each allegation contained in this petition and to abide by and perform such acts, orders and decrees as this Court may make in the premises.

Aluminum Company of America, by Roy A. Hunt, President. William Watson Smith, Frank B. Ingersoll, William R. Scott, William H. Eckert, Leon E. Hickman, Smith, Buchanan, Scott & Ingersoll, Solicitors for Petitioner.

[fol. 134] *Duly sworn to by Roy A. Hunt. Jurat omitted in printing.*

[fols. 135-136] EXHIBIT TO PETITION

IN DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Equity No. 8573.

UNITED STATES OF AMERICA

v.

ALUMINUM COMPANY OF AMERICA et al.

PETITION—Filed April 23, 1937

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[fol. 141] PETITION

To the Honorable, the Judges of the District Court of the United States for the Southern District of New York, sitting in equity:

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against Aluminum Company of America; Aluminium Limited; The Aluminum Cooking Utensil Company; Aluminum Goods Manufacturing Company; Aluminum Manufactures, Incorporated; Aluminum Ore Company; Aluminum Seal Company; Alcoa Power Company, Limited; Alton and Southern Railroad; Bauxite and Northern Railway Company; Carolina Aluminum Company; Cedar Rapids Transmission Company, Limited; Franklin Fluorspar Company; Knoxville Power Company; Louisiana Terminal Company; Massena Securi-
[fol. 142] ties Corporation; The Massena Terminal Railroad Company; Nantahala Power and Light Company; Ocean Dominion Steamship Corporation; The Republic Mining and Manufacturing Company; The St. Lawrence River Power Company; St. Louis and Ohio River Railroad; Surinaamsche Bauxite Maatschappij; The United States Aluminum Company; The Coalesced Company; The Aloxite Corporation; J. H. Alger; George G. Allen; Earl Blough; L. Braasch; Ailsa Mellon Bruce; David K. E. Bruce; George H. Clapp; Safford K. Colby; Andre Henry Coüannier; Arthur V. Davis; Edward K. Davis; J. J. Demskie; M. B. deSousa; F. L. Farrell; Edwin S. Frickes; C. B. Fox; Aimé Geoffrion; George R. Gibbons; Roy A. Hunt; J. R. D. Huston; Alvah K. Lawrie; C. L. Lycette; Leighton McCarthy; Andrew W. Mellon; Paul Mellon; Richard K. Mellon; Union Trust Company of Pittsburgh, Richard K. Mellon, Jennie King Mellon, and Sarah Mellon Scaife as Executors of the Estate of R. B. Mellon, deceased; G. O. Morgan, Jr.; Charles H. Moritz; Winthrop C. Neilson; Sarah Mellon Scaife; George J. Stanley; W. C. Terry; Paul J. Urquhart; J. F. Van Lane; Irving W. Wilson; Robert E. Withers, defendants; and for its petition complains and alleges as follows:

[fol. 143] Jurisdiction and Venue

1. This petition is filed and the jurisdiction of this Court is invoked to obtain equitable relief against said defendants

because of their violations jointly and severally, as hereinafter alleged, of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

2. The unlawful monopoly, attempts to monopolize, combination and conspiracy to monopolize, and contracts, combinations, and conspiracies to restrain trade and commerce, among the several states and with foreign nations, hereinafter described, have operated and have been carried on in part within the Southern District of New York, and many of the unlawful acts pursuant thereto have been performed by defendants and their representatives in said district. The interstate trade and commerce in aluminum and aluminum products, hereinafter described, is carried on in part within said district.

Description of Defendants

3. Defendant Aluminum Company of America, hereinafter called Aluminum Company, is a corporation organized in 1888 under the laws of the State of Pennsylvania under the name of the Pittsburgh Reduction Company which was changed to the present name in 1907. In 1925 said corporation merged with it under the laws of the State of Pennsylvania the Canadian Manufacturing and Development Company, a corporation organized under the laws [fol. 144] of that State. The principal office of Aluminum Company is in the Gulf Building, Pittsburgh, Pennsylvania, and it also maintains an office where it transacts business and can be found, in the New York Central Building, New York City, in the Southern District of New York.

4. Defendant Aluminium Limited is a corporation organized by Aluminum Company in 1928 under the laws of the Dominion of Canada, carrying on business in Canada and elsewhere and having offices in Montreal, Canada, and in the British Empire Building, New York City, and in the Koppers Building, Pittsburgh.

5. Defendant The Aluminum Cooking Utensil Company is a corporation organized in 1901 under the laws of the State of Pennsylvania, by Aluminum Company, then called Pittsburgh Reduction Company, since then has engaged in the manufacture and sale of aluminum cooking utensils as a wholly owned subsidiary of Aluminum Company. It

carries on business and has offices at New Kensington, Pennsylvania.

6. Defendant Aluminum Goods Manufacturing Company is a corporation organized in 1909 under the laws of the State of New Jersey, and since then has engaged in manufacturing aluminum cooking utensils and other fabricated aluminum products and in selling the same in interstate trade and commerce in the same markets as defendant The Aluminum Cooking Utensil Company. It carries on business and has its principal office at Manitowoc, Wisconsin. In 1909 Aluminum Company acquired, and has since [fol. 145] retained, 26 per cent of the capital stock of defendant Aluminum Goods Manufacturing Company.

7. Defendant Aluminum Manufactures, Incorporated, is a corporation organized in 1919 under the laws of the State of Delaware, and carries on business at Buffalo, New York, Cleveland, Ohio, Detroit, Michigan, and Fairfield, Connecticut, and has principal offices at Cleveland, Ohio. In 1919 said corporation acquired the properties and business of Aluminum Castings Company, which had been organized under the laws of the State of Ohio in 1909 to consolidate a number of independent casting companies with Aluminum Company's foundry. In July, 1922, Aluminum Company, then owning 58 per cent of the capital stock of defendant Aluminum Manufactures, Incorporated, a large producer of aluminum sand castings, entered into a contract with Aluminum Manufactures, Incorporated, by the terms of which Aluminum Company leased the foundries and other properties of defendant Aluminum Manufactures, Incorporated, for a period of 24 years, and acquired control of the Aluminum Die Casting Corporation organized under the laws of the State of New Jersey and engaged in the production of aluminum die castings, and acquired a substantial interest in the Aluminum Screw Machine Products Company, a corporation organized under the laws of the State of New Jersey and engaged in the production of aluminum bolts, nuts, and similar articles. Aluminum Company now owns 73 per cent of the capital stock of defendant Aluminum Manufactures, Incorporated, and 100 [fol. 146] per cent of the capital stock of Aluminum Die Casting Corporation and Aluminum Screw Machine Prod-

ucts Company, and by virtue of said lease and stockholdings is the largest producer in the United States of aluminum sand castings and aluminum die castings.

8. Defendant Aluminum Ore Company is a corporation organized in 1929 under the laws of the State of Delaware by Aluminum Company as a successor of the Aluminum Ore Company incorporated in 1909 under the laws of the State of Pennsylvania. It and the said predecessor corporation of the same name have been engaged since 1909 at East St. Louis, Illinois, in refining alumina from bauxite, as wholly owned subsidiaries of Aluminum Company. It has its principal offices in said Gulf Building, Pittsburgh.

9. Defendant Aluminum Seal Company is a corporation organized in 1914 under the laws of the State of Pennsylvania, and since then has engaged as a wholly owned subsidiary of Aluminum Company in manufacturing aluminum bottle seals and caps at New Kensington, Pennsylvania. It has offices in said Gulf Building, Pittsburgh.

10. Defendant Alcoa Power Company, Limited, is a corporation organized in 1925 under the laws of the Dominion of Canada, and since then has engaged as a wholly owned subsidiary of Aluminum Company in producing electric power in the Province of Quebec, Canada. It has offices in Montreal, Canada, and in said Gulf Building, Pittsburgh.

[fol. 147] 11. Defendant Alton and Southern Railroad is a corporation organized in 1913 under the laws of the State of Illinois, and since then has engaged as a wholly owned subsidiary of Aluminum Company in transporting raw material and finished products to and from the refinery at East St. Louis, Illinois, of defendant Aluminum Ore Company. It has offices in said Gulf Building, Pittsburgh.

12. Defendant Bauxite and Northern Railway Company is a corporation organized in 1906 under the laws of the State of Arkansas by Aluminum Company, then called Pittsburgh Reduction Company, and since then has engaged in the transportation of bauxite from bauxite mines in Arkansas to main line railroads, as a wholly owned subsidiary of Aluminum Company. It carries on business in the vicinity of Bauxite, Arkansas, and has its principal office in said Gulf Building, Pittsburgh.

13. Defendant Carolina Aluminum Company is a corporation organized in 1906 under the laws of the State of North Carolina under the name of Tallassee Power Company, to engage in producing and marketing electric energy. In 1912 Aluminum Company purchased the capital stock of said Tallassee Power Company. In 1915 Aluminum Company purchased the properties of the Southern Aluminum Company, a corporation organized in 1912 under the laws of the State of New York to engage in the production of aluminum, and transferred said properties to said Tallassee Power Company, which has engaged since then as a wholly owned subsidiary of Aluminum Company in the [fol. 148] production of aluminum. Said Carolina Aluminum Company carries on business at Badin, North Carolina, and vicinity, and has its principal office in said Gulf Building, Pittsburgh.

14. Defendant Cedar Rapids Transmission Company, Limited, is a corporation organized in 1914 under the laws of the Dominion of Canada, and since then has engaged as a wholly owned subsidiary of Aluminum Company in supplying electric energy to the producing and manufacturing plants of Aluminum Company at Massena, New York. It carries on business in the Provinces of Quebec and Ontario, Canada, and has offices at Toronto, Canada, and in said Gulf Building, Pittsburgh.

15. Defendant Franklin Fluorspar Company is a corporation organized in 1924 under the laws of the State of Delaware, and since then has owned and operated fluorspar mines in Illinois and Kentucky as a wholly owned subsidiary of Aluminum Company. It carries on business in Illinois and Kentucky and has its principal office in said Gulf Building, Pittsburgh. Fluorspar produced by said mines is a chemical solvent used by Aluminum Company in the production of aluminum.

16. Defendant Knoxville Power Company is a corporation organized in 1900 under the laws of the State of Tennessee, and since then has engaged as a wholly owned subsidiary of Aluminum Company in supplying electric energy to the aluminum producing plant and the rolling mill of Aluminum Company at Alcoa, Tennessee. It has offices in said Gulf Building, Pittsburgh.

[fol. 149] 17. Defendant Louisiana Terminal Company is a corporation organized in 1928 under the laws of the State of Delaware to engage as a wholly owned subsidiary of Aluminum Company in wharfage at Westwego, Louisiana. It has offices in said Gulf Building, Pittsburgh.

18. Defendant Massena Securities Corporation was organized in 1929 under the laws of the State of New York to operate as a holding company for certain subsidiaries of Aluminum Company. It carries on business in the vicinity of Massena, New York, and has offices in said Gulf Building, Pittsburgh.

19. Defendant The Massena Terminal Railroad Company is a corporation organized in 1900 under the laws of the State of New York, and since 1906 has engaged as a wholly owned subsidiary of Aluminum Company (known until 1907 as Pittsburgh Reduction Company) in transporting materials to and from the aluminum producing works of Aluminum Company at Massena, New York. It carries on business in the vicinity of Massena, New York, and has offices in said Gulf Building, Pittsburgh.

20. Defendant Nantahala Power and Light Company is a corporation organized in 1929 under the laws of the State of North Carolina, and since then has engaged as a wholly owned subsidiary of Aluminum Company in the production and sale of electric energy in said state. It has its principal offices in Bryson City, North Carolina.

[fol. 150] 21. Defendant Ocean Dominion Steamship Corporation is a corporation organized in 1925 under the laws of the State of New York, and since then has engaged as a wholly owned subsidiary of Aluminum Company in the transportation of bauxite and other materials from Dutch Guiana and British Guiana to East St. Louis, Illinois. It has offices at 17 Battery Place, New York City.

22. Defendant The Republic Mining and Manufacturing Company is a corporation organized in 1929 under the laws of the State of Delaware as a successor of American Bauxite Company incorporated under the laws of the State of Pennsylvania in 1909, and also of Republic Mining and Manufacturing Company incorporated under the laws of the State of Georgia in 1882. Said American Bauxite Company and Republic Mining and Manufacturing Company

held and operated bauxite lands in Arkansas as a wholly owned subsidiary of Aluminum Company until said properties were taken over by defendant The Republic Mining and Manufacturing Company in 1929. Defendant The Republic Mining and Manufacturing Company since its incorporation in 1929 has operated as a wholly owned subsidiary of Aluminum Company, with its principal office in said New York Central Building, New York City.

23. Defendant The St. Lawrence River Power Company is a corporation organized in 1902 under the laws of the State of New York, carrying on business in the vicinity of Massena, New York, and having offices in said Gulf Build-
[fol. 151] ing, Pittsburgh. All of the capital stock of said corporation was acquired in 1906 by Aluminum Company, then called Pittsburgh Reduction Company, and said corporation has since been engaged in supplying electric power to the aluminum producing works of Aluminum Company at Massena, New York.

24. Defendant St. Louis and Ohio River Railroad is a corporation organized in 1920 under the laws of the State of Illinois, and since then has engaged as a wholly owned subsidiary of Aluminum Company in transporting raw materials and finished products to and from the refinery at East St. Louis, Illinois, of defendant Aluminum Ore Company. It has offices in said Gulf Building, Pittsburgh.

25. Defendant Surinaamsche Bauxite Maatschappij is a corporation organized in 1916 under the laws of Dutch Guiana, and since then has held and operated bauxite properties there as a wholly owned subsidiary of Aluminum Company. It has an office in said Gulf Building, Pittsburgh.

26. Defendant The United States Aluminum Company is a corporation organized in 1901 under the laws of the State of Pennsylvania, and since then has engaged as a wholly owned subsidiary of Aluminum Company in manufacturing aluminum sheet, extrusions, moldings, castings and other aluminum products at Fairfield, Connecticut. It has offices in said Gulf Building, Pittsburgh.

27. Defendant The Coalesced Company is a corporation
[fol. 152] organized in 1929 under the laws of the State of Delaware, carrying on business at Pittburgh, Pennsylvania, and having offices at 514 Smithfield Street in said Pittsburgh.

28. Defendant The Aloxite Corporation is a corporation organized in 1929 under the laws of the State of Delaware under the name of The Outside Corporation, which was changed to the present name in 1932. Said corporation carries on business and has offices at 514 Smithfield Street, Pittsburgh, Pennsylvania.

29. Defendant Union Trust Company of Pittsburgh is a corporation organized in 1889 under the laws of the State of Pennsylvania, carrying on business and having its offices in Pittsburgh, Pennsylvania.

30. The individual defendants Arthur V. Davis, Roy A. Hunt, Edwin S. Fickes, George R. Gibbons, Robert E. Withers, C. B. Fox, Safford K. Colby, Winthrop C. Neilson, George J. Stanley, Irving W. Wilson, David K. E. Bruce, George H. Clapp, Richard K. Mellon, Paul J. Urquhart, J. R. D. Huston, C. L. Lycette, and J. J. Demskie, have been and are officers or directors of, and have participated and participate in, the direction and management of defendant Aluminum Company and of other corporate defendants, and may be found in said New York Central Building, New York City, or in said Gulf Building, Pittsburgh; except said C. B. Fox who may be found at Missouri Avenue and 35th Street, East St. Louis, Illinois; except said George H. Clapp who may be found in the Frick Building, Pittsburgh; and [fol. 153] except said Richard K. Mellon who may be found at the Mellon National Bank, Pittsburgh. Defendant George G. Allen until recently has been a director and has participated in the direction and management of defendant Aluminum Company and of other corporate defendants, and may be found at 30 Rockefeller Plaza, New York City.

31. The individual defendants Edward K. Davis, Earl Blough, J. H. Alger, G. O. Morgan, Jr., J. F. Van Lane, F. L. Farrell, Aimé Geoffrion, Leighton McCarthy, W. C. Terry, M. B. deSousa, L. Braasch, and André Henry Coüannier have been and are, officers or directors, of, and have participated and participate in, the direction and management of defendant Aluminium Limited, and may be found at the offices of that company in the British Empire Building, New York City, the Canada Life Building, Toronto, Ontario, Canada, or at 1000 Dominion Square Building, Montreal, Quebec, Canada, except said André Henry Coüannier who may be found at 63 Avenue des Champs Elysees,

Paris, France; except said Aimé Geoffrion who may be found at 112 St. James Street, West, Montreal; and except said L. Braasch who may be found at Unter den Linden, 56, Berlin, Germany.

32. The individual defendant Andrew W. Mellon was a director of defendant Aluminum Company from 1892 to 1921, and participated in its direction and management during that period of time, and he and individual defendant Paul Mellon and individual defendant Ailsa Mellon Bruce have owned, and now own, a large proportion of the capital [fol. 154] stock of defendant Aluminum Company, and also through their ownership of all the capital stock of defendant The Coalesced Company have owned, and now own, a large proportion of the capital stock of defendant Aluminium Limited, and thereby have influenced, and influence, the policies and activities of defendants Aluminum Company and Aluminium Limited. Said individual defendants may be found in Pittsburgh, Pennsylvania, care Mellon National Bank.

33. Defendant Union Trust Company of Pittsburgh and defendants Richard K. Mellon, Jennie King Mellon and Sarah Mellon Scaife are Executors of the Estate of R. B. Mellon, deceased, by virtue of letters testamentary issued to them December 8, 1933, by the Probate Court of Allegheny County, State of Pennsylvania, and said Executors in their official capacity, and said Richard K. Mellon and Sarah Mellon Scaife in their individual capacities, have owned or held, and now own or hold, a large proportion of the capital stock of defendant Aluminum Company. Said defendants, in said capacities, through their ownership or possession of all of the capital stock of defendant The Aloxite Corporation, have owned or controlled, and now own or control, a large proportion of the capital stock of defendant Aluminium Limited, and by virtue of said stockholdings these defendants have influenced, and now influence, the policies and activities of defendant Aluminum Company and defendant Aluminium Limited. Said individual defendants may be found in care of defendant Union Trust Company of Pittsburgh, in said Pittsburgh.

[fol. 155] 34. The individual defendant Alvah K. Lawrie was for many years and until 1933 a director of defendant Aluminum Company and participated in its direction and

management, and owned, and now owns, a substantial amount of the capital stock of defendant Aluminum Company and of defendant Aluminium Limited, and may be found at 930 Park Avenue, New York City.

35. The individual defendant Charles H. Moritz was for many years and until 1928 an officer of defendant Aluminum Company and participated in its direction and management, and thereafter was an officer and director of defendant Aluminium Limited, and participated in its direction and management. Said defendant owns a substantial amount of the capital stock of defendant Aluminum Company and of defendant Aluminium Limited, and may be found care Power City Trust Company, Niagara Falls, New York.

Description of Aluminum Industry

36. Aluminum was discovered in 1827, and was regarded as a rare metal until 1886 when a process for its commercial production was discovered by one Charles M. Hall to whom a patent was granted in 1889, the same thereupon becoming the property of defendant Aluminum Company, then and until 1907 known as the Pittsburgh Reduction Company. In 1892 a patent covering a similar reduction process was granted to one Charles S. Bradley, said patent being sus- [fol. 156] tained after protracted litigation with said Pittsburgh Reduction Company, which thereupon purchased a license under said Bradley patent. Since the expiration of said Bradley patent in 1909, the process has been available to the public, no other patents having been granted.

37. The fundamental substance in the production of the metal aluminum is bauxite, an ore of reddish brown color found in extensive natural deposits, which when ground and chemically treated produces oxide of aluminum or alumina. In the production of aluminum this oxide is subjected to an electrolytic process through introduction into a bath of molten cryolite, with the result that the aluminum is deposited in a molten state on the bottom of the bath, being then drawn off and poured into molds or pigs. In the commercial production of aluminum by said electrolytic process, large quantities of electric energy are required which can be generated under favorable conditions more economically by water power than by steam.

38. Aluminum as a metal serves many purposes better than steel, nickel, tin, zinc, copper, or lead, its chief industrial competitors. Although aluminum in its early period of production was used chiefly in the manufacture of utensils, castings, and specialties, additional uses have been developed until it has now become essential in building construction, in the manufacture of refrigerators and radio apparatus, and in the production of equipment used in rail, air, and water transportation and in military and naval [fol. 157] defense, its qualities being lightness of weight, electrical conductivity, resistance to corrosion, ductility, malleability, and strength when alloyed.

39. Aluminum Company and its wholly and partially owned subsidiaries are engaged, and for many years past have been engaged, in interstate and foreign trade and commerce in bauxite, alumina, aluminum, and products manufactured therefrom, as will more fully appear hereinbelow.

Offenses Charged

40. Defendants have violated and are now violating the provisions of said Sherman Antitrust Act, by monopolizing, attempting to monopolize, combining and conspiring to monopolize, and contracting, combining and conspiring to restrain, interstate and foreign trade and commerce, and more particularly by enabling the Aluminum Company to acquire and maintain a monopoly of bauxite, alumina, aluminum, and products manufactured therefrom, and by excluding others from the fair opportunity to engage in interstate and foreign trade and commerce in said articles. Said monopoly, attempts to monopolize, combination and conspiracy to monopolize, and contracts, combinations and conspiracies to restrain, interstate trade and commerce in bauxite, alumina, aluminum, and products manufactured therefrom, will now be described in further detail, that is to say:

[fol. 158]

I

Monopoly of Aluminum Company and Subsidiaries

41. Aluminum Company, upon its incorporation in 1888, was capitalized at $20,000 which represented cash paid in, and said Hall patent was in 1889 acquired in exchange for

stock of the value of $400,000. A total of $2,200,000 was shortly thereafter received in cash from the sale of stock. Thereafter and in 1925 properties of a value of $16,362,500, and cash in the amount of $584,375, were received in exchange for stock. From time of incorporation to December 31, 1934, Aluminum Company paid cash dividends in the approximate total of $82,000,000, and in addition, on or about June 1, 1928, in exchange for certain of its properties abroad, received stock from defendant Aluminium Limited of a stated value of $22,988,814, said stock being thereafter distributed by Aluminum Company as a dividend. As of December 31, 1934, the net worth of Aluminum Company, as shown by its Annual Report, was $174,808,682 which after deducting said paid in capital represents profits of a total of $155,241,807 from time of incorporation to December 31, 1934, over and above said dividends paid during said period of approximately $105,000,000. Profits of such size in supplying the public with an article of prime necessity for which there has been, and will be, an increasing public demand, and for which there is no available substitute, are excessive and result from defendants' monopolization of this industry.

[fol. 159] 42. Aluminum Company and its wholly owned subsidiaries, defendants herein, have progressively increased their business until their sales of all aluminum products in 1929 reached a peak of $92,901,261.

43. Defendant The Republic Mining and Manufacturing Company, wholly owned subsidiary of Aluminum Company, owns or holds more than 90 per cent of the bauxite deposits in the United States commercially suitable for the production of aluminum; and Aluminum Company controls and uses 100 per cent of the bauxite produced in the United States for the manufacture of aluminum.

44. Defendant Aluminum Ore Company, wholly owned subsidiary of Aluminum Company, produces at its plant in East St. Louis, Illinois, 100 per cent of the alumina used in the United States in the production of aluminum.

45. Aluminum Company, and its wholly owned subsidiary, defendant Carolina Aluminum Company, are the sole producers of virgin aluminum in the United States. Said virgin aluminum is produced at three plants operated by Aluminum Company, at Alcoa, Tennessee, Massena, New

York, and Niagara Falls, New York; and at a fourth plant operated by Carolina Aluminum Company at Badin, North Carolina.

46. Aluminum Company owns and controls, and for many years past has owned and controlled, more than 85 per cent of the combined total of virgin aluminum produced and im- [fol. 160] ported and of the competitive secondary or "scrap" aluminum, moving in interstate trade and commerce in the United States. More than half of the imported virgin aluminum is imported by Aluminum Company. Only a small portion of the available secondary aluminum is fully competitive with virgin aluminum.

47. Aluminum Company produces and sells more than 90 per cent of the aluminum sheet moving in interstate trade and commerce in the United States.

48. Aluminum Company produces and sells more than 95 per cent of the alloys of aluminum, commonly known as the hard alloys or duralumin, moving in interstate trade and commerce in the United States.

49. Aluminum Company produces and sells virtually 100 per cent of the extruded and structural shapes, wire, and cable for electrical transmission, and bars, rods, and tubing made of aluminum or aluminum alloys, moving in interstate trade and commerce in the United States.

50. Aluminum Company is the largest producer and seller of aluminum castings, aluminum foil, and bronze powder moving in interstate trade and commerce in the United States.

51. Aluminum Company and defendant The Aluminum Cooking Utensil Company, wholly owned subsidiary of Aluminum Company, produce and sell approximately 50 [fol. 161] per cent of the aluminum cooking utensils moving in interstate trade and commerce in the United States, and in addition Aluminum Company owns 26 per cent of the capital stock of, and is represented on the directorate of, defendant Aluminum Goods Manufacturing Company, largest domestic manufacturer of aluminum cooking utensils with the exception of defendant The Aluminum Cooking Utensil Company.

52. Aluminum Company and the licensees under its patents manufacture and sell approximately 80 per cent of the

aluminum pistons moving in interstate trade and commerce in the United States.'

53. By virtue of its 100 per cent monopoly of the production and sale of alumina and virgin aluminum in the United States, Aluminum Company has acquired and is maintaining a monopolistic control of the production and sale of alumina, aluminum, aluminum sheet, alloy sheet, basic fabricated products, and through them of products manufactured therefrom, sold in interstate and foreign commerce, and possesses the power to fix arbitrary, discriminatory, and unreasonable prices and to extend and perpetually maintain said monopolistic control and to exclude others who would, except for said monopolistic control, engage in competition with Aluminum Company in the production and sale of bauxite, alumina, virgin aluminum, and aluminum products manufactured therefrom. Because new enterprises desiring to engage in the aluminum industry would be [fol. 162] placed at the mercy of a single powerful corporation controlling essential row materials, and because of the great hazard necessarily involved in venturing into a business so completely monopolized by Aluminum Company and its wholly owned subsidiaries, said monopolistic control has had and will continue to have the direct and immediate effect of suppressing and preventing substantial competition which would otherwise arise in the production and sale in interstate and foreign commerce of bauxite, alumina, aluminum, and aluminum products manufactured therefrom, and is inimical to the public interest and in violation of Section 2 of said Sherman Antitrust Act.

II

Preservation of Monopoly by Restraints upon Foreign Competition

54. Aluminum Company, its officers, directors, agents, affiliates, and wholly owned subsidiaries, from 1902 to the present have pursued a policy and have adopted various and sundry devices with reference to foreign competition designed to curtail, and having the effect of curtailing, shipments of aluminum and aluminum products from foreign countries to the United States, and have thereby protected and maintained the aforesaid monopolistic control of Aluminum Company in the United States. That is to say, Alumi-

num Company, its officers, directors, agents, affiliates, and wholly owned subsidiaries, have from time to time entered into agreements and understandings with the major aluminum companies of foreign countries to limit world produc- [fol. 163] tion, remove accumulated stocks, fix prices, and allocate and restrict sales in world markets, with the intent and effect of restraining importations of aluminum into the United States; and have acquired substantial and sometimes controlling interests in foreign aluminum producing and fabricating companies, water power sites, power plants, bauxite deposits, and leucite deposits (substitutes for bauxite deposits), and have thereby intimidated foreign producers through control of raw materials and low cost producing facilities in foreign countries which could be used to undersell such foreign producers in world markets in retaliation against such foreign producers shipping aluminum or aluminum products to the United States, with the intent and effect of suppressing shipments of aluminum and aluminum products to the United States for sale in competition with Aluminum Company, and thereby protecting and maintaining the aforesaid monopolistic control of the Aluminum Company; and have purchased substantial interests in foreign aluminum companies in which major foreign producers of aluminum hold substantial interests, and have thereby created interlocking interests with most of Aluminum Company's world competitors, with the intent and effect of suppressing shipments of aluminum and aluminum products by such foreign producers to the United States for sale in competition with Aluminum Company. Said agreements, understandings, acquisitions, and purchases by Aluminum Company, its agents, affiliates, and wholly owned subsidiaries, will now be described in greater detail, that is to say:

[fol. 164] 55. In 1902, Aluminum Company, then called Pittsburgh Reduction Company, with the intent and effect of protecting and maintaining the aforesaid monopolistic control, organized under the laws of Canada the Northern Aluminum Company, Limited, later called Aluminum Company of Canada, to engage in the production and fabrication of aluminum in Canada, and caused said Northern Aluminum Company, Limited, to enter into an agreement or understanding, continued until 1906, with all of the European producers of aluminum, to allocate sales and fix

prices of aluminum and aluminum products throughout the world, thereby restraining imports of aluminum into the United States.

56. On or about September 25, 1908, Aluminum Company, for the purpose and with the effect of protecting and maintaining its aforesaid monopolistic control, caused said Northern Aluminum Company, Limited, to enter into a contract with Societe Anonyme Pour l'Industrie de l'Aluminium of Neuhausen, Switzerland, then the largest European producer of aluminum, hereinafter called the Swiss Aluminum Company, by the terms of which said Swiss Aluminum Company agreed not to sell aluminum in the American market defined as the Western Hemisphere exclusive of the United States, nor in the United States market which was to be reserved to Aluminum Company; and said Northern Aluminum Company, Limited, agreed not to sell aluminum in the European market and engaged that Aluminus Company likewise would not sell in said market. The principal and restrictive provisions of said contract were canceled June [fol. 165] 7, 1912, by decree of the United States District Court, Western District of Pennsylvania.

57. On June 10, 1912, three days after the entry of said decree of June 7, 1912, canceling the restrictive provisions of the aforesaid contract of September 25, 1908, Aluminum Company caused said Northern Aluminum Company, Limited, to enter into a contract with l'Aluminium Francais, a corporation organized under the laws of France, hereinafter called the French Aluminum Company, with said Swiss Aluminum Company, with the British Aluminium Company, Limited, a corporation organized under the laws of Great Britain, with the Anglo-Norwegian Company, Limited, a corporation organized under the laws of Norway, with the Aluminum Corporation Limited, a corporation organized under the laws of Great Britain, and with La Societa Italiana Per La Fabricazione Dell'Aluminio, a corporation organized under the laws of Italy. Said contract restricted and allocated sales of aluminum outside the United States, and provided that the quantity of aluminum to be sold in any one year by each of the parties, and the prices therefor, were to be fixed and determined by a Committee named by said signatories. All European parties to this contract were then engaged in the production of alumi-

num and in the exportation of the same to the United States for sale therein in interstate and foreign commerce in competition with Aluminum Company, and the purpose and effect of said contract were to restrict said exportations and restrain said commerce. The continuance of operations [fol. 166] under said contract was rendered impracticable by the outbreak of the World War, and said contract was therefore canceled by the parties January 23, 1915.

58. In 1916 Aluminum Company, with the intent and effect of maintaining and extending its monopoly in the production and sale of aluminum, organized under the laws of the British Guiana, the Demerara Bauxite Company, Limited, to hold and operate bauxite properties in that country, such company being retained as a wholly owned subsidiary until 1928 when it was transferred to defendant Aluminum Limited which has since retained the same.

59. In 1916 Aluminum Company, with the intent and effect of maintaining and extending its monopoly in the production and sale of aluminum, organized under the laws of Dutch Guiana, defendant Surinaamsche Bauxite Maatschappij, retained since as a wholly owned subsidiary of Aluminum Company, to hold and operate bauxite properties in that country.

60. In 1921 Aluminum Company, with the intent and effect of maintaining and extending its monopoly in the production and sale of aluminum, incorporated Jadranski Bauxit Dioni'Co Drus'tvo under the laws of Jugo-Slavia to hold and operate bauxite lands there, said corporation being held as a wholly owned subsidiary until 1928 when it was transferred to defendant Aluminium Limited which has since retained the same.

[fol. 167] 61. In 1922 Aluminum Company purchased one half interest in, and obtained control of, Norsk Aluminum Company, a corporation organized under the laws of Norway, engaged in producing aluminum there and in exporting substantial and increasing quantities thereof to the United States for sale therein in interstate and foreign commerce in competition with Aluminum Company. The purpose and effect of said purchase were to eliminate said competition and to protect and maintain the aforesaid monopolistic control of Aluminum Company in the United States against importations of aluminum from Europe to the

United States, by intimidating European producers through control of an important low cost producing plant whose output could be used to undersell such producers in European and world markets. Aluminum Company held such interest and control until 1928 when it transferred the same to defendant Aluminium Limited which has since retained said interest and control.

62. In 1922 Aluminum Company purchased one-third interest in Det Norske-Nitrid Company, a corporation organized under the laws of Norway, the remaining two-thirds interest being held equally by said French Aluminum Company and by said British Aluminium Company, Limited, said three European corporations being then engaged in producing aluminum and in exporting the same to the United States for sale therein in interstate and foreign commerce in competition with Aluminum Company. The purpose and effect of Aluminum Company's purchase were to eliminate said competition of said Det Norske-Nitrid Company, and to restrain said competition of said French Alum- [fol. 168] inum Company and of said British Aluminium Company, Limited, through the establishment of a joint venture with said French Aluminum Company and said British Aluminum Company, Limited, which were natural competitors of Aluminum Company and under free and unrestrained competitive conditions would offer their products in the United States in competition with Aluminum Company. Aluminum Company retained said holding in Det Norske-Nitrid Company until 1928 when it transferred the same to defendant Aluminium Limited which has since held it.

63. In 1923 Aluminum Company, with the intent and effect of maintaining its monopoly in the production and sale of aluminum, purchased a 40 per cent interest in Carrieres de l'Arboussas, a corporation organized under the laws of France and owning and operating bauxite properties there. Aluminum Company retained said interest until 1928 when it transferred the same to defendant Aluminium Limited which has since retained the same.

64. In 1924 Aluminum Company acquired one-third interest in Fonderie de Precision, a corporation organized under the laws of France and engaged there in the manufacture of aluminum die castings, the remaining interest being re-

tained by said French Aluminum Company then engaged in producing aluminum in France and in exporting the same to the United States for sale therein in interstate trade and [fol. 169] commerce in competition with Aluminum Company. A purpose and an effect of said transaction were, through the establishment of a joint venture with said French Aluminum Company, to suppress competition from said French Aluminum Company, which was a natural competitor of Aluminum Company and under free and unrestrained competitive conditions would offer its products in the United States in competition with Aluminum Company. Aluminum Company retained said one-third interest until 1928 when it transferred the same to defendant Aluminium Limited which has since held it.

65. In 1924 Aluminum Company acquired a 55 per cent interest in Det Norske Aktieselskab, a corporation organized under the laws of Norway and owning water powers and patents on electrode processes, and also acquired 100 per cent interest in the Kinservik Company and in the Laate-Fos Company, corporations organized under the laws of Norway and owning undeveloped water powers there. The low cost production of aluminum requires large quantities of electric energy in the economical generation of which water powers are essential and a purpose and effect of the above acquisitions were to restrain exports of aluminum to the United States for sale therein in interstate trade and commerce in competition with Aluminum Company, by threatening European producers with underselling in their own home markets through availability there of large resources for the economical generation of hydro-electric energy. Aluminum Company retained all said interests until 1928 when it transferred the same to defendant Alumi- [fol. 170] nium Limited which has since held them.

66. In 1924 Aluminum Company acquired the capital stock of Societa Anonyme Mineraria Triestina, a corporation organized under the laws of Italy and owning and operating bauxite properties there. The purpose and effect of this acquisition were to obtain substantial quantities of bauxite in Europe to aid in supplying the requirements of such aluminum producing plants there as Aluminum Company then held or might thereafter purchase or construct

in connection with its aforementioned policy of restraining exportations of aluminum to the United States by threatening European producers with low cost production and underselling in their own home markets. Aluminum Company held said capital stock until 1928 when it transferred the same to defendant Aluminium Limited which has since retained said holding.

67. In 1925 Aluminum Company acquired from said French Aluminum Company one-half interest in, and thereafter became a joint owner with said French Aluminum Company, in Societa Dell'Alluminio Italiana, a corporation organized under the laws of Italy and engaged there in manufacturing aluminum and aluminum products available for exportation to the United States and for sale therein in interstate trade and commerce in competition with Aluminum Company. The purpose and effect of such acquisition were to forestall said competition of said Societa Dell' Alluminio Italiano, and by the acquisition of such partial [fol. 171] control of an important European aluminum producing company and through the establishment of another joint venture with said French Aluminum Company to restrain the latter's exports of aluminum to the United States for sale therein in interstate trade and commerce in competition with the Aluminum Company. Aluminum Company retained said one-half interest until 1928 when it transferred the same to defendant Aluminium Limited which shortly thereafter acquired the remaining interest and has since held said corporation as a wholly owned subsidiary.

68. In 1925 Aluminum Company and said French Aluminum Company and said Swiss Aluminum Company organized, and thereafter became joint owners of, Aluminio Espagnol, incorporated under the laws of Spain to manufacture aluminum and aluminum products there. The purpose and effect of said joint ownership were to restrain the exports to the United States of said French Aluminum Company and of said Swiss Aluminum Company through the establishment of a further joint venture with said French Aluminum Company and an initial joint venture with said Swiss Aluminum Company, which were natural competitors of Aluminum Company and under free and unrestrained competitive conditions would offer their products in the United States in competition with Aluminum Company. Aluminum Company retained its said holding until 1928

when it transferred the same to defendant Aluminium Limited which thereafter sold said holding to said French Aluminum Company.

[fol. 172] 69. In 1925 Aluminum Company incorporated Primorski Bauxite Company under the laws of Jugo-Slavia to hold and operate bauxite lands previously acquired there. The purpose and effect of acquiring said bauxite lands were to obtain substantial quantities of bauxite in Europe to aid in supplying the requirements of such aluminum producing plants as Aluminum Company then held or might thereafter purchase or construct in connection with its aforementioned policy of restraining exportations of aluminum to the United States by threatening European producers with low cost production and underselling in their own home markets. Aluminum Company held said Primorski Bauxite Company as a wholly owned subsidiary until 1928 when it transferred the same to defendant Aluminium Limited which has since retained said company.

70. In 1926 Aluminum Company incorporated Forces Motrices du Bearn under the laws of France to hold and develop a large water power acquired there. In 1912 Aluminum Company had incorporated Bauxites du Midi under the laws of France to hold and operate bauxite properties acquired there for the purpose and with the effect of holding substantial quantities of bauxite in Europe to aid in supplying the requirements of such aluminum producing plants as Aluminum Company might thereafter purchase or construct in connection with its aforementioned policy of restraining exportations of aluminum to the United States by threatening European producers with low cost production and underselling in their own home markets. The special purpose and [fol. 173] effect of incorporating Forces Motrices du Bearn and Beauxites du Midi, as aforesaid, were to enable Aluminum Company at its will to produce aluminum commercially in France and thus to offer the threat to said French Aluminum Company of low cost production and destructive competition in its own home market, if, despite the aforesaid joint ventures of Aluminum Company and said French Aluminum Company, the latter should export aluminum to the United States in such quantities or sell therein at such prices as to interfere with the aforesaid monopolistic control of the United States market by Aluminum Company. Aluminum Company held said Bauxites du Midi and said

Forces Motrices du Bearn as wholly owned subsidiaries until 1928 when it transferred said companies to defendant Aluminium Limited which has since held them.

71. In 1927 Aluminum Company incorporated Prodotti Chimici Napoli under the laws of Italy to engage in the refining of alumina from leucite, for the purpose and with the effect of obtaining substantial quantities of alumina in Europe to aid in supplying the requirements of such aluminum producing plants there as Aluminum Company then held or might thereafter purchase or construct in connection with its aforementioned policy of restraining exportations of aluminum to the United States by threatening European producers with low cost production and underselling in their own home markets. Aluminum Company retained said Prodotti Chimici Napoli as a wholly owned subsidiary [fol. 174] until 1931 when it was transferred to defendant Aluminium Limited which has since held it.

72. In 1928 Aluminum Company caused to be incorporated under the laws of the Dominion of Canada defendant Aluminium Limited to which Aluminum Company transferred all its business and holdings outside of the United States, except defendant Surinaamsche Bauxite Maatschappij, defendant Cedar Rapids Transmission Company, Limited, defendant Alcoa Power Company, Limited, and said Prodotti Chimici Napoli. As consideration for said properties, defendant Aluminium Limited issued all of its capital stock to Aluminum Company which thereupon distributed said stock proportionately among its own stockholders, Andrew W. Mellon, R. B. Mellon, and Arthur V. Davis, who together then held the majority of the capital stock of Aluminum Company, receiving more than 50 per cent of said stock of defendant Aluminium Limited. As a result of said stock distribution, the ownership of a majority of the shares of stock in both Aluminum Company and defendant Aluminium Limited has since remained in a small group of persons, defendants herein, common to both corporations, prominent in the organization of Aluminum Company, who through such stock ownership, the close relationships among officials of both corporations, and the use by both corporations of the same banking, legal, and other facilities have since controlled the policies and activities of both Aluminum Company and defendant Aluminium Limited. The officers and directors of Aluminium Limited from the time of its organi-

zation have been, almost without exception, individuals [fol. 175] formerly identified with the direction and management of Aluminum Company. Defendant Aluminium Limited has offices in the United States, and many of its directing officials function and reside there.

73. Defendant Aluminium Limited upon its organization assumed the contractual obligations of, and continued the relationships and associations of, Aluminum Company with foreign producers of aluminum, and has since effected further contractual relationships with said foreign producers.

74. Defendant Aluminium Limited produces large quantities of aluminum at low cost in Canada and Norway, and has shipped occasional quantities of aluminum to the United States for sale to Aluminum Company, but it does not export any aluminum to the United States for sale in interstate trade and commerce in competition with Aluminum Company although the United States is a logical market for products of Aluminium Limited; and Aluminum Company does not export any aluminum, or any products fabricated therefrom, for sale abroad in competition with defendant Aluminium Limited which directs its own operations so as to aid and supplement the operations of Aluminum Company and other corporate defendants. The failure of Aluminum Company and defendant Aluminium Limited to compete with each other is the result of the common control of said corporations by a small group of stockholders and of agreements and understandings between said corporations.

[fol. 176] 75. Defendant Aluminium Limited was organized as aforesaid with the intent and effect of establishing said common control and transferring to Aluminium Limited as a foreign corporation the aforesaid contractual obligations which Aluminum Company had entered into with foreign aluminum producers, and enabling Aluminium Limited as a foreign corporation to enter into further contractual obligations with said foreign producers restricting competition in world markets and curtailing imports of aluminum into the United States, thereby attempting to evade the prohibitions of said Sherman Anti-trust Act and the injunctive provisions of said Decree of June 7, 1912.

76. Defendant Aluminium Limited, whose policies have been, and are being, directed through the aforesaid com-

mon control exercised over it and Aluminum Company, promotes contractual arrangements and understandings with foreign producers of aluminum pursuant to which exportations of aluminum to the United States for sale therein in interstate trade and commerce in competition with Aluminum Company have been, and are being, unlawfully restrained.

77. In July, 1931, defendant Aluminium Limited, whose policies were then directed through the aforesaid common control exercised over it and Aluminum Company, acting in the latter's behalf, entered into a contract with said French Aluminum Company, said British Aluminium Company, Limited, said Swiss Aluminum Company, and the Vereinigte Aluminium Werke, hereinafter called the Ger- [fol. 177] man Aluminum Company, a corporation organized under the laws of Germany and engaged there in the production of aluminum and in the exportation of the same to the United States for sale in interstate trade and commerce in competition with Aluminum Company. Said parties and their subsidiaries then were, and are now, the only substantial producers of aluminum outside of the United States, except for production which has recently developed in Russia whose product is not exported. Pursuant to the terms of said contract, said parties in October, 1931, incorporated Alliance Aluminium Compagnie under the laws of Switzerland, the capital stock of said corporation being subscribed and paid for by said parties, defendant Aluminium Limited acquiring 28 per cent of said stock and also representation upon the Board of Governors of said Alliance Aluminium Compagnie. The sums so received by said Alliance Aluminium Compagnie were employed in purchasing from its stockholders, and in holding, such accumulated stocks of aluminum as said stockholders had been unable theretofore to market. Said contract of July, 1931, limited the future production of each of the parties to such amounts of aluminum as should be thereafter determined by said Board of Governors, and authorized said Board to fix the prices for said aluminum. Said contract also provided that alumina should be sold only to stockholders of said Alliance Aluminium Compagnie.

78. Prior to and at the time of said contract of July, 1931, said foreign producers held large quantities of alu-

minum for which there was no market and in the produc-
[fol. 178] tion of which they had incurred heavy financial obligations, and the intent of defendant Aluminium Limited in participating in said contract and in acquiring a substantial stockholding in said Ailiance Aluminium Compagnie, and the effect thereof, were (1) to provide for the availability of sufficient funds with which to purchase surplus stocks of aluminum in the world market, thereby preventing the exportation of such surplus to the United States for sale therein in interstate and foreign commerce in competition with Aluminum Company at prices lower than those fixed and established by said Aluminum Company, and (2) to provide against future surplus accumulations abroad which might enter into said commerce, and (3) to suppress exportations of aluminum to the United States in the future at such prices or in such amounts as to endanger the aforesaid monopolistic control of Aluminum Company.

79. In 1931 defendant Aluminium Limited, whose policies were then directed through the common control exercised over it and Aluminum Company, acting in behalf of and pursuant to an understanding with Aluminum Company, entered into a contract with said British Aluminium Company, Limited, said French Aluminum Company, said German Aluminum Company, and said Swiss Aluminum Company, by the terms of which their competition in sales in Japan of aluminum and aluminum products was restricted. An intent in and an effect of the execution of said contract were the establishment by defendant Aluminium Limited of further interlocking interests with said European pro-
[fol. 179] ducers tending to restrain exportations of aluminum to the United States for sale therein in interstate and foreign commerce in competition with Aluminum Company.

80. In 1931 defendant Aluminium Limited, whose policies were then directed through the common control exercised over it and Aluminum Company, acting in behalf of and pursuant to an understanding with Aluminum Company, entered into a contract with said British Aluminium Company, Limited, restricting competition in sales of aluminum and aluminum products by the contracting parties in India. An intent in and effect of the execution of said contract were the establishment by defendant Aluminium

Limited of a further interlocking interest with said British Aluminium Company, Limited, tending to restrain its exportations of aluminum to the United States for sale therein in interstate and foreign commerce in competition with Aluminum Company.

81. Aluminum Company submitted to the Department of Justice its proposal to acquire the aforesaid interests in Norsk Aluminum Company and Det Norske-Nitrid Company (described in paragraphs 61 and 62 hereinabove), and in 1922 obtained the consent of the then Attorney General to a modification of the aforesaid decree of June 7, 1912, to remove injunctive prohibitions against said acquisitions. Aluminum Company also submitted to the Department of Justice its proposal to purchase the aforesaid properties of the Southern Aluminum Company (referred to [fol. 180] in paragraph 13 hereinabove), and obtained from an official of said Department a letter stating that the Department saw nothing in the facts submitted by counsel for Aluminum Company which would call for action by the Department under the aforesaid decree of June 7, 1912. In none of these transactions did the Department of Justice have before it the question as to whether or not said acquisitions, considered together with other acquisitions and facts alleged in this petition, constituted violations of said Sherman Antitrust Act. Except as hereinabove alleged, Aluminum Company at no time submitted to the Department of Justice proposals or facts relating to acquisitions or transactions set forth in this petition.

82. The aforesaid agreements and understandings of Aluminum Company and Aluminium Limited with foreign producers, and the aforesaid acquisitions and purchases abroad have been designed to restrain, and have had the effect of restraining, imports of bauxite, alumina, aluminum and alumi-um products into the United States and sales thereof in interstate and foreign trade and commerce in competition with Aluminum Company, in violation of Section 1 of said Sherman Antitrust Act; and have thereby materially aided in establishing, protecting, and maintaining the aforesaid monopolistic control of Aluminum Company in the United States. The existence and maintenance of said monopolistic control under such circumstances and by such means is inimical to the public interest and in violation of Section 2 of said Sherman Antitrust Act.

[fol. 181] III

Acquisition and Maintenance of Monopoly by Unfair and Oppressive Tactics

83. The aforesaid monopolistic control of the aluminum industry in the United States by Aluminum Company has been acquired, extended and maintained by unfair, unreasonable, and oppressive agreements and understandings and by contracts, combinations and conspiracies in restraint of interstate and foreign trade and commerce, which will now be described in greater detail, that is to say:

84. In 1894 Aluminum Company, then called the Pittsburgh Reduction Company, knowing that large quantities of low cost electric energy were necessary for the commercial production of aluminum, and with the intent and effect of forestalling competition in the production and sale of aluminum and of extending its monopoly therein beyond the life of the patents heretofore described, in its contract with the Niagara Falls Power Company, a New York corporation, for power for Aluminum Company's new aluminum producing plant at Niagara Falls, New York, required said Niagara Falls Power Company, then outstanding in hydro-electric development, to agree not to supply power to any other aluminum producing company, said prohibition being still in full force and effect. Aluminum Company purchases substantial quantities of mechanical power from said Niagara Falls Power Company under an exclusive arrangement whereby it receives discriminatory rates and advantages not made available to others.

[fol. 182] 85. In 1902 Aluminum Company, then called the Pittsburgh Reduction Company, knowing that large quantities of low cost electric power were required for the commercial production of aluminum, and with the intent and effect of forestalling competition in the production and sale of aluminum, and of extending its monopoly therein beyond the life of the patents heretofore described, caused said Northern Aluminum Company, Limited, in its contract with the Shawinigan Water and Power Company for power for said subsidiary's new plant at Shawinigan Falls, Canada, to require said Shawinigan Water and Power Company, a Canadian corporation, then outstanding in hydro-electric development, to agree not to supply

power to any other aluminum producing company. Said prohibition is still in full force and effect.

86. On July 25, 1905 Aluminum Company, then called the Pittsburgh Reduction Company, entered into a contract with the General Chemical Company, a New York corporation, to acquire therefrom all the capital stock of the General Bauxite Company, a Delaware corporation, owning and operating bauxite lands in the States of Georgia, Alabama, and Arkansas, the contract of purchase providing that for a period of 50 years said Bauxite Company would supply the bauxite requirements of said Chemical Company in an amount not exceeding 50,000 tons annually; and that bauxite lands then owned, or acquired during said period, by said Pittsburgh Reduction Company, would be held subject to the performance of said contract. It was further provided in said contract of purchase that said [fol. 183] Bauxite Company would not sell, other than to said Chemical Company, bauxite for domestic manufacture of sulphate or hydrate of alumina, or of alum and its compounds, the same being products manufactured by said Chemical Company, and that said Chemical Company would not use or knowingly sell bauxite so supplied to it by said Bauxite Company, or any bauxite, or the products thereof, for the purpose of conversion into the metal aluminum. Said restrictive provisions imposed restraints upon said Chemical Company greater than were necessary to afford fair protection to the interests of Aluminum Company and were employed with the intent and effect of preventing said Chemical Company, then in a strong financial position, from engaging in the commercial production of aluminum after the expiration of said patents. Said provisions were canceled June 7, 1912, by decree of the United States District Court, Western District of Pennsylvania.

87. On or about January 1, 1907 Aluminum Company entered into a contract to purchase alumina from the Pennsylvania Salt Manufacturing Company, a Pennsylvania corporation, the vendor agreeing as part of the consideration that during the life of the contract, a period of five years, Aluminum Company having the option to renew for like period, said vendor would not engage in the manufacture of aluminum nor allow any company in which it owned a controlling interest to do so, nor invest its capital in any way, through the purchase of stock of any corporation or

otherwise, in the manufacture of aluminum, nor sell alu-
[fol. 184] mina for use in the manufacture of aluminum to any one other than Aluminum Company. Said restrictive provisions imposed restraints upon said Pennsylvania Salt Manufacturing Company greater than were necessary to afford fair protection to the interests of Aluminum Company and were employed with the intent and effect of preventing said Pennsylvania Salt Manufacturing Company, then in a strong financial position, from engaging in the commercial production of aluminum. Said provisions were canceled June 7, 1912, by decree of the United States District Court, Western District of Pennsylvania.

88. On or about April 20, 1909 Aluminum Company purchased from the Norton Company, a Massachusetts corporation manufacturing an abrasive called alundum, the capital stock of the Republic Mining and Manufacturing Company, a corporation organized under the laws of the State of Georgia owning and operating bauxite properties in the States of Georgia, Alabama, and Arkansas. It was agreed in the contract of purchase that Aluminum Company would annually supply said Norton Company with 50,000 tons of bauxite for a period of 40 years during which time Aluminum Company would not use any bauxite produced by it in the United States or Canada or sell any of said bauxite to others than the Norton Company, for the manufacture of alundum, nor directly or indirectly engage or assist in any business competitive with said Norton Company in the manufacture of alundum; that during such period said Norton Company would not use or sell any of the bauxite sup-
[fol. 185] plied by Aluminum Company or any other bauxite or product thereof, for the purpose of conversion into aluminum, nor directly or indirectly engage or assist in any business competitive with Aluminum Company in the manufacture of aluminum. Said restrictive provisions imposed restraints upon said Norton Company greater than were necessary to afford fair protection to the interests of Aluminum Company and were employed with the intent and effect of preventing said Norton Company, then in a strong financial position, from engaging in the commercial production of aluminum. Said provisions were canceled June 7, 1912, by decree of the United States District Court, Western District of Pennsylvania.

89. In 1909 Aluminum Company acquired, and has since retained 26 per cent of the capital stock of, and representation upon the directorate of, defendant Aluminum Goods Manufacturing Company then engaged in the manufacture of aluminum cooking utensils and other fabricated products and in selling the same in interstate and foreign commerce in competition with defendant The Aluminum Cooking Utensil Company. The purpose and effect of said acquisition were to obtain for Aluminum Company an important influence over the policies of defendant Aluminum Goods Manufacturing Company and to restrain said competition. Aluminum Company and its officers now own approximately 31 per cent of the capital stock of defendant Aluminum Goods Manufacturing Company, and two of Aluminum Company's officers are directors of defendant Aluminum Goods Manufacturing Company. In 1931 defendant Aluminium Limited caused Aluminum Goods, Limited, to [fol. 186] be incorporated under the laws of the Dominion of Canada to engage in the manufacture of utensils and other products, defendant Aluminium Limited retaining 51 per cent of the capital stock, the remaining shares thereof being sold to defendant Aluminum Goods Manufacturing Company. The purpose of the sale of 49 per cent of the capital stock of said Aluminum Goods, Limited, to defendant, Aluminum Goods Manufacturing Company, and the effect thereof, were to give defendants Aluminum Company, Aluminium Limited, and Aluminium Goods Manufacturing Company a monopolistic control of the interstate and foreign trade and commerce in aluminum cooking utensils in the United States and Canada.

90. On or about November 16, 1910 Aluminum Company purchased from one Gustave A. Kruttschnitt and one James C. Coleman 720 shares of the capital stock of defendant Aluminum Goods Manufacturing Company, said vendors being required to agree that for a period of 20 years thereafter they would not compete in the United States east of Denver with either of said defendants. Said vendors had been engaged theretofore in the manufacture of aluminum cooking utensils and in the sale of the same in interstate trade and commerce, and the purpose and effect of said restrictive provisions were to restrain said interstate trade and commerce by the elimination of said vendors from the aluminum industry during said period of time. Said restrictive

provisions were canceled June 7, 1912, by decree of the United States District Court, Western District of Pennsylvania.

[fol. 187] 91. On or about October 21, 1912 Aluminum Company and defendant Northern Aluminum Company, Limited, entered into a contract with Southern Aluminum Company, as heretofore alleged a corporation organized in 1912 under the laws of New York to engage therein in the production of aluminum, and with Societe Generale des Nitrures, a joint stock company organized under the laws of France and owning certain patents for the production of alumina from bauxite, the two last named corporations being controlled by said French Aluminum Company, then a large European producer of aluminum. Said contract provided for the formation of a corporation in the United States to own said patents and to operate thereunder, the capital stock of said new corporation to be subscribed and paid for by the contracting parties. The purpose and effect of said contract were to prevent the manufacture of alumina under said patents by others in the United States and Canada, and to create an interlocking interest between Aluminum Company and said French Aluminum Company through their joint operations in the production of alumina, and thereby suppress imports into the United States of aluminum and aluminum products by said French Aluminum Company. The manufacture of alumina under said patents proved to be impracticable, and said contract was therefore canceled by the parties in 1920.

92. In March 1918 Aluminum Company entered into a contract with the Cleveland Metal Products Company, a corporation organized under the laws of Ohio and since [fol. 188] 1915 engaged at Cleveland, Ohio, in the production of aluminum sheet and its sale in interstate and foreign trade and commerce in competition with Aluminum Company. Prior to said contract the said Cleveland Metal Products Company was the first and only competitor of Aluminum Company in the United States in the production and sale of aluminum sheet. Pursuant to the terms of said contract the Aluminum Rolling Mill Company was incorporated under the laws of Ohio to purchase and operate the rolling mill theretofore owned and operated by said Cleveland Metal Products Company, Aluminum Company then purchasing 60 per cent of the capital stock of, and obtaining

the control of the management and operation of, said Aluminum Rolling Mill Company. The purpose and effect of said contract were to reestablish Aluminum Company's complete monopoly in the production and sale of aluminum sheet, by the elimination of the competition of said Cleveland Metal Products Company. In August 1923, in compliance with an order of the United States Circuit Court of Appeals, Third Circuit, Aluminum Company divested itself of said stock of the Aluminum Rolling Mill Company by selling the same to the Cleveland Metal Products Company. Shortly thereafter Aluminum Company obtained a judgment against said Aluminum Rolling Mill Company for indebtedness, and acquired said rolling mill at sheriff's sale.

93. In 1919 defendant Aluminum Goods Manufacturing Company, 26 per cent of whose capital stock was then owned by Aluminum Company, and upon whose directorate Aluminum Company then had representation, and for whose [fol. 189] policies and activities Aluminum Company therefore shared responsibility, purchased the aluminum sheet rolling mill as St. Louis, Missouri, then owned and operated by the Bremer-Waltz Corporation which was engaged in the production of aluminum sheet and in the sale thereof in interstate trade and commerce in competition with Aluminum Company, and was the only competitor of Aluminum Company in the United States in the production and sale of aluminum sheet. The purpose and effect of such purchase were to eliminate said competition.

94. In 1924 Aluminum Company purchased, and has since retained, one third of the capital stock of Republic Carbon Company, a corporation organized under the laws of Delaware to manufacture at Niagara Falls, New York, carbon electrodes suitable in the production of aluminum and of special grades of steel. The demand for carbon electrodes had materially declined with the termination of the World War, and the Republic Carbon Company had determined therefore to engage in the production of aluminum. In furtherance of this plan large sums of money had been expended in locating and acquiring bauxite lands and in overcoming legal obstacles raised in connection therewith by a subsidiary of Aluminum Company. Because of its possession of bauxite lands, of long term contracts for the supply of hydro-electric energy, of a plant equipped to

manufacture carbon electrodes, and of ample financial resources, the Republic Carbon Company offered to Aluminum Company the threat of competition in the production of aluminum and its sale in interstate and foreign commerce, and the purpose and effect of said purchase were to forestall said competition.

[fol. 190] 95. In 1924 Aluminum Company, then owning patents covering the casting processes for the commercial production of aluminum pistons, and being the sole domestic producer of virgin aluminum, a product indispensable in the manufacture of such pistons, acquired an exclusive license to manufacture and sell aluminum pistons under the basic patents covering the design or structure of such pistons. The purpose and effect of acquiring said exclusive license were to obtain for Aluminum Company a monopoly in the production and sale of such pistons in interstate and foreign commerce, which is still held by Aluminum Company and its licensees.

96. In 1924 one James B. Duke, a citizen of the State of New Jersey, who controlled extensive hydro-electric properties in the United States and Canada and who commanded large reserves of capital, entered upon negotiations to engage in a joint venture with one George D. Haskell, a citizen of the State of Massachusetts, who possessed valuable information with respect to the production of aluminum, to produce aluminum for sale in interstate and foreign trade and commerce in competition with Aluminum Company. Said Duke and said Haskell formulated plans to use the electric energy developed by the aforesaid water powers and expended substantial sums of money in furtherance of this project. In 1925 defendant Arthur V. Davis, then President of Aluminum Company, acting on its behalf and knowing of the plans of said Duke and said Haskell, with the intent of eliminating them as potential competitors, entered into an agreement with said Duke under the terms of which (1) Canadian Manufacturing and [fol. 191] Development Company, controlled by said Duke and owning power sites on the Saguenay River in Canada, merged with Aluminum Company, (2) said undeveloped water powers in Canada were conveyed to Aluminum Company as part of said merger, and (3) Duke undertook to furnish Aluminum Company with important quantities of electric energy. As an immediate and intended result of

said agreement, said Duke abandoned the aforesaid joint venture with said Haskell, said Duke and his associates obtained one-ninth of the capital stock of the reorganized Aluminum Company and membership on the directorate thereof, and said Duke and said Haskell were eliminated as potential competitors of Aluminum Company. Under the terms of said merger, Aluminum Company paid many millions of dollars in excess of the true value of the properties acquired by it, for the purpose of eliminating said potential competition. The additional water power acquired by Aluminum Company was far in excess of its legitimate requirements, and was not needed for the normal operation and development of Aluminum Company. Aluminum Company, after said merger, organized under the laws of the Dominion of Canada the defendant Alcoa Power Company, Limited, since retained by it as a wholly owned subsidiary, to hold and develop said water powers; and through its wholly owned subsidiary, the Aluminum Company of Canada, theretofore known as said Northern Aluminum Company, Limited, Aluminum Company in 1926 constructed a large low cost aluminum producing plant on said Saguenay River. Aluminum Company in 1928 transferred said Aluminum Company of Canada to defendant [fol. 192] Aluminium Limited which has since held the same.

97. In 1926 Aluminum Company acquired 53 per cent of the capital stock of the Duke Price Power Company, a corporation organized under the laws of the Dominion of Canada and owning and operating on said Saguenay River a hydro-electric plant which complemented said undeveloped water powers obtained by Aluminum Company through its said merger with said Canadian Manufacturing and Development Company. Said plant and water powers comprised all the facilities available on said Saguenay River for the production of electric energy, of a capacity of approximately 1,540,000 horsepower. A purpose and an effect of said stock acquisition were to enlarge the capacity of Aluminum Company for low cost production outside of the United States, to operate as a further threat to dissuade European producers from interfering with Aluminum Company's aforesaid monopoly of the United States market. Aluminum Company retained said stock until 1928

when it transferred the same to defendant Aluminium Limited which has since held said stock.

98. In 1927 Aluminum Company was then, as theretofore and now, the sole producer of virgin aluminum in the United States, and fixed and established the prices for all virgin aluminum moving in interstate trade and commerce, said product being indispensable in the manufacture of aluminum sheet. Aluminum Company also produced in excess of 90 per cent of the aluminum sheet moving in inter- [fol. 193] state trade and commerce, and fixed and established the prices for all aluminum sheet moving in interstate trade and commerce. Sheet Aluminum Corporation, of Jackson, Michigan, and Fairmont Aluminum Company, of Fairmont, West Virginia, both of which began operations in 1926, were in 1927 producing aluminum sheet and selling the same in interstate and foreign trade and commerce in competition with Aluminum Company, and were required because of said Aluminum Company's control over prices to purchase virgin aluminum at, and to sell their aluminum sheet at, prices established by Aluminum Company, all of which Aluminum Company well knew. Knowing also that the respective prices for virgin aluminum and aluminum sheet theretofore maintained by it for a period of years would limit to a narrow margin of profit the operations of any competing sheet manufacturer selling his sheet in interstate trade and commerce, Aluminum Company during the period August 1 to October 20, 1927, effected changes in the respective prices of virgin aluminum and of aluminum sheet which so reduced the differentials between the prices of these two products that such competing sheet manufacturer, even though he should roll efficiently and should conduct his business with thrift, skill, and good judgment, could not continue operations without incurring losses destructive of his business. As a result, after said price changes in 1927 said Sheet Aluminum Corporation was obliged virtually to suspend operations, and said Fairmont Aluminum Company was obliged to suffer serious losses, to curtail its operations substantially, and to establish an interlocking [fol. 194] interest with a foreign producer of aluminum in order to remain in business. The competition offered by said Cleveland Metal Products Company during the period 1915 to 1918 was, as heretofore alleged, terminated in 1918

when its mill came under the control of Aluminum Company. The competition offered by said Bremer-Waltz Corporation was, as heretofore alleged, terminated in 1919 when its mill was acquired by defendant Aluminum Goods Manufacturing Company. Said sheet Aluminum Corporation and said Fairmont Aluminum Company afforded the only other competition of consequence in interstate trade and commerce in aluminum sheet encountered by Aluminum Company, and the purpose of effectuating said reductions in differentials was to eliminate the competition of said Sheet Aluminum Corporation and of said Fairmont Aluminum Company and to preserve Aluminum Company's aforesaid monopolistic control of said trade and commerce, the practical effect of said reductions being the virtual elimination of the competition of said Sheet Aluminum Corporation, the contraction of the competition of said Fairmont Aluminum Company, and the preservation of said monopolistic control.

99. During the period 1924 to 1931 Aluminum Company was then, as theretofore and now, the sole producer of virgin aluminum in the United States, and fixed and established the prices for all virgin aluminum moving in interstate trade and commerce, said product being indispensable in the manufacture of aluminum alloy sheet. Aluminum Company also manufactured such a large proportion of the total domestic output of aluminum alloys, [fol. 195] a product *re-* resulting from mixing aluminum in a molten state with other metals, that it was able to, and did, establish the prices for all aluminum alloy sheet moving in interstate trade and commerce. Knowing that the Baush Machine Tool Company, of Springfield, Massachusetts, its first, and theretofore its only, competitor in the field of aluminum alloys, had been manufacturing aluminum alloy sheet uninterruptedly since 1919 and selling the same in interstate trade and commerce, and had become an important producer thereof by 1924, and knowing that any competitor in said manufacture and sale would be required because of Aluminum Company's control over prices to purchase virgin aluminum at, and to sell his sheet at, prices established by it, Aluminum Company during the period 1924 to 1931 effected changes in the respective prices of virgin aluminum and of aluminum alloy sheet which so reduced the differentials between the prices of virgin aluminum and of

said sheet that any competitor in the manufacture, and sale in interstate trade and commerce, of aluminum alloy sheet, even though he should roll efficiently and should conduct his business with thrift, skill, and good judgment, would be unable to carry on operations without incurring losses destructive of his business. As an immediate and intended result, said Baush Machine Tool Company was obliged to conduct its said sheet operations at losses which accumulated over said period 1924 to 1931 until said company was compelled virtually to suspend such production, Aluminum Company having since encountered no competition of consequence in the production of aluminum alloy sheet and its sale in interstate trade and commerce. The [fol. 196] purpose and effect of said reductions in differentials were to eliminate said competition of said Baush Machine Tool Company and to establish, extend, and maintain Aluminum Company's aforesaid monopolistic control of said trade and commerce.

100. The aforesaid monopolistic control of the aluminum industry by Aluminum Company, acquired, extended, and maintained as aforesaid, has been used by defendants to fix arbitrary, discriminatory, oppressive and unreasonable prices for aluminum and aluminum products manufactured therefrom. From the time of its original development to the present, Aluminum Company has made unfair and arbitrary price discriminations against small and independent manufacturers, and has discriminated in favor of its wholly and partially owned subsidiaries engaged in competition with said independent manufacturers, and has granted unfair and discriminatory rebates to favored customers, and has refused to sell aluminum, supplied inferior aluminum, and delayed shipments, to said independent manufacturers, and has extracted information from said independent manufacturers as to the prices bid by them on contracts sought by Aluminum Company's said subsidiaries, and has coerced said independent manufacturers to buy aluminum exclusively from Aluminum Company by representing that their supply would otherwise be cut off. By virtue of the aforesaid monopolistic control, defendants possess the power to continue to fix and adopt arbitrary, discriminatory, oppressive and unreasonable prices and competitive practices.

[fol. 197] 101. On March 1, 1937 defendant Aluminum Company of America, exercising its aforesaid power to fix oppressive and unreasonable prices, arbitrarily announced an advance of 1¢ per pound in the carlot price of virgin ingot, which it had theretofore maintained at a level of 19¢ per pound since October 1934. This unwarranted advance was made notwithstanding the fact that said defendant had increased its production of virgin aluminum from 119,295,000 pounds, valued at $22,070,000 in 1935, to 224,929,000 pounds, valued at $41,612,000 in 1936, and had experienced an increase in earnings from $9,571,206, or 55¢ per share of common stock, after preferred dividend requirements, in 1935 to $20,866,936, or $8.65 per share of common stock, after preferred dividend requirements, in 1936. Moreover, this advance in price was especially unjustifiable since every indication pointed to an all-time high production for 1937, with a substantial increase in earnings over those of 1936.

102. In participating in the agreements, understandings, acquisitions, purchases, and arbitrary, discriminatory, oppressive and unreasonable prices and competitive practices hereinbefore referred to, defendants have suppressed and eliminated competition and excluded others who would otherwise venture into competition in the aluminum industry, and have monopolized, attempted to monopolize, combined and conspired to monopolize, and have entered into contracts, combinations and conspiracies to restrain, the aforesaid interstate and foreign trade and commerce in bauxite, alumina, aluminum and aluminum products manufactured [fol. 198] therefrom, to the great detriment of potential competitors, independent manufacturers, consumers of aluminum and aluminum products, and the public, and in violation of Sections 1 and 2 of said Sherman Antitrust Act.

103. In order that the aluminum industry in all its branches may be open to those who may desire to enter therein, and that competition may arise and that the benefits therefrom may accrue to the public, and that the interstate and foreign trade and commerce in aluminum and in the products manufactured therefrom may be wholly unrestrained and the existing monopoly therein destroyed, Aluminum Company and all other defendants herein should

be restrained from continuing said practices, contracts, relationships, combinations and conspiracies, and from entering into any further contracts, relationships, combinations and conspiracies of like or similar nature, and should be required to make such divestiture of their properties and holdings as will terminate said monopolistic control and effect competitive conditions in the industry.

Prayer

Wherefore and inasmuch as adequate remedy in the premises can be obtained only in a court of equity, Petitioner prays:

(1) That said monopoly, attempts to monopolize, combination and conspiracy to monopolize, and contracts, combinations, and conspiracies in restraint of, interstate and foreign trade and commerce, be adjudged and decreed to be [fol 199] unlawful, and that the agreements, understandings, acquisitions, purchases and practices alleged in this petition be adjudged and decreed to be in violation of said Sherman Antitrust Act.

(2) That the Court adjudge and decree that all of the defendants herein have monopolized, attemp-ed to monopolize, combined and conspired to monopolize, and contracted, combined and conspired to restrain, the aforesaid interstate and foreign trade and commerce, in violation of Sections 1 and 2 of said Sherman Antitrust Act.

(3) That defendants and each of them, their officers, directors, agents, representatives, and all persons and corporations acting or claiming to act on behalf of them, or any of them, be perpetually enjoined from monopolizing, attempting to monopolize, combining or conspiring to monopolize, or agreeing, combining or conspiring to restrain, the aforesaid interstate and foreign trade and commerce, and from engaging in or participating in practices, contracts, relationships or understandings, or claiming any rights thereunder, having a tendency to continue or revive any of the aforesaid violations of said Sherman Antitrust Act.

(4) That Aluminum Company be adjudged and decreed to be a monopoly in violation of Section 2 of said Sherman Antitrust Act.

(5) That Aluminum Company be dissolved and that its properties be rearranged under several separate and independent corporations in such a manner as to dissolve effectively the aforesaid monopolistic control and prevent fur- [fol. 200] ther violations of said Sherman Antitrust Act, and that all of the defendants herein, corporate and individual, be required to make such divestiture and conveyances of their stockholdings and properties as shall be necessary to accomplish such dissolution.

(6) That the Court appoint such receivers and trustees as may be necessary or appropriate to effectuate a dissolution of Aluminum Company and the aforesaid monopoly.

(7) That the agreement or understanding whereby defendant Aluminum Company and defendant Aluminium Limited have refrained from competition with each other be adjudged and decreed to be an illegal combination and conspiracy to restrain and monopolize interstate and foreign trade and commerce, and that in order to establish an effectual guarantee against further suppression of competition between said two corporate defendants through similar agreements or understandings, each defendant herein, corporate or individual, owning any of the capital stock in both defendant Aluminum Company and defendant Aluminium Limited be ordered to divest itself or himself of all stockholdings in one or the other of said corporate defendants; that each defendant herein, corporate or individual, be perpetually enjoined from simultaneously holding or controlling, directly or indirectly, or through subsidiary corporations, agents, representatives or assignees, any of the capital stock of both defendant Aluminum Company and defendant Aluminium Limited, or any of the capital stock of defendant Aluminium Limited and any other corporate defendant herein.

[fol. 201] (8) That Petitioner have such other, further, general, and different relief as the nature of the case may require and the Court may deem proper in the premises.

(9) That Petitioner recover costs of this suit.

(10) That writs of subpœna issue, directed to said defendants, commanding them and each of them to appear herein and to answer under oath each allegation contained in this petition and to abide by and perform such acts,

orders and decrees as the Court may make in the premises.

Walter L. Rice, John W. Aiken, Special Assistants to the Attorney General; F. Gwyn Harper, Jr., N. A. Townsend, Jr., Special Attorneys. Homer S. Cummings, Attorney General. Robert H. Jackson, Assistant Attorney General. Wendell Berge, Special Assistant to the Attorney General. Lamar Hardy, United States Attorney.

April 23rd, 1937.

[fol. 202] *Duly sworn to by Walter L. Rice. Jurat omitted in printing.*

[fol. 203] IN UNITED STATES DISTRICT COURT

ORDER TEMPORARILY RESTRAINING DEFENDANTS, ETC.—
Entered April 29, 1937

Now, to-wit, April 29, 1937, the court having examined the petition of the Aluminum Company of America filed this day in the above entitled case and after due consideration and upon motion of counsel for said company, and it appearing that immediate and irreparable damage will be done unless the temporary restraining order be granted immediately and as notice cannot be given because of the shortage of time, it is ordered, adjudged and decreed as follows:

1. That Homer S. Cummings, Attorney General of the United States, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Special Assistant to the Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney, acting in their capacities as attorneys and agents of the United States of America, be made parties defendant to the above entitled case pending in this court.

2. That the aforesaid persons named in the first numbered paragraph of this order in their official capacities as set forth in said paragraph be and they hereby are jointly and severally temporarily restrained from prosecuting or proceeding in any way whatsoever in the suit which they

[fols. 204-207] caused to be institut in the District Court of the United States for the Southern District of New York in the name of United States of America against the Aluminum Company of America et al., at Equity No. 85-73, in said Court and from permitting any other persons under their authority or control to prosecute or proceed in any way in said suit and from bringing in any court other than this Court any suit against Aluminum Company of America raising the same issues as those involved in the first suit heretofore brought in this Court and upon which this Court has passed judgment by the consent decree; and that a rule to show cause why this temporary restraining order should not be continued and a preliminary injunction of like tenor issued be and it hereby is granted against the above named parties, returnable May 7, 1937, at 9 o'clock a. m., Eastern Standard Time; bond to be approved by this Court to be given by the petitioner, the Aluminum Company of America, in the sum of fifty thousand dollars ($50,000).

3. That subpœnas be issued to be served in accordance with law upon the parties mentioned in the first numbered paragraph hereof, said subpœnas to be served by the marshals of the respective districts in which said parties reside or may be found.

Per Curiam, G.

[fol. 208] In United States District Court

Special Appearance—Filed May 6, 1937

Robert H. Jackson, Assistant Attorney General and Walter L. Rice, a Special Assistant to Attorney General, enter their special appearance for Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendel Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney and LaMar Hardy, United States Attorney, for the purpose of a motion to quash the service, set aside the return, dismiss the petition filed by Aluminum Company of America April 29, 1937, and vacate the restraining order granted April 29, 1937, on the ground

that the District Court of the United States for the Western District of Pennsylvania has no jurisdiction over the said attorneys for the United States and that the said District is not the proper venue and for no other purpose.

Robert H. Jackson, Assistant Attorney General.
Walter L. Rice, Special Assistant to Attorney General.

[fol. 209] IN UNITED STATES DISTRICT COURT

MOTION TO QUASH SERVICE, SET ASIDE RETURN, DISMISS DEFENDANT'S PETITION AND VACATE RESTRAINING ORDER—Filed May 7, 1937

Robert H. Jackson, Assistant Attorney General, and Walter L. Rice, Special Assistant to the Attorney General, appearing specially for the sole purpose of this motion, move to quash the alleged service of subpœnas in equity, alleged to have been served upon Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney, and to vacate and set aside the return of the United States Marshal upon the said writs of subpœna, and to dismiss the petition filed by defendant Aluminum Company of America April 29, 1937, and to vacate the restraining order issued by this Court against said attorneys for the United States on April 29, 1937, upon the following grounds:

1. That the said writs of subpœna issued out of this Honorable Court were not served upon said attorneys for the United States within the Western District of Pennsylvania, but were served within the District of Columbia and [fol. 210] within the Southern District of New York, and that no valid service of process upon said attorneys for the United States issuing out of this Court in this proceeding can be had upon said attorneys outside of the Western District of Pennsylvania, and that this Honorable Court, by virtue of the alleged service upon the said attorneys in the

District of Columbia and in the Southern District of New York, has acquired no jurisdiction over said attorneys.

2. That none of said attorneys for the United States is a citizen or an inhabitant of, or resident within, the Western District of Pennsylvania, and that the District Court of the United States for the Western District of Pennsylvania is not the proper venue for such a proceeding, and that this Honorable Court has no jurisdiction over any of said attorneys for the United States.

3. That it appears from the annexed affidavit of Walter L. Rice, Special Assistant to the Attorney General, that none of said attorneys for the United States is a citizen or an inhabitant of, or resident within, the Western District of Pennsylvania, and that none of said attorneys was found, or could be found, within said Western District of Pennsylvania at the time of the issuance of the restraining order April 29, 1937, or at the time of the alleged service of the respective subpœnas, and that the District Court of the United States for the Western District of Pennsylvania is not the proper venue for this proceeding, and that said [fol. 211] Court has no jurisdiction over said attorneys for the United States.

Robert H. Jackson, Assistant Attorney General; Walter L. Rice, Special Assistant to the Attorney General, Solicitors for Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney.

May 7, 1937.

AFFIDAVIT OF WALTER L. RICE, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL

Walter L. Rice, being duly sworn, deposes and says:

1. That he is a Special Assistant to the Attorney General, and as such has been active in the conduct of the suit

entitled United States of America v. Aluminum Company of America et al., instituted in the United States District Court for the Southern District of New York on April 23, 1937.

[fol. 212] 2. That on April 30, 1937 Harry Allen, Deputy Marshal for the District of Columbia, accompanied by William J. Rittinger, Deputy Clerk for the United States District Court for the Western District of Pennsylvania, appeared in the District of Columbia and there handed to Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, and N. A. Townsend, Jr., Special Attorney, copies of subpœnas commanding each of them to appear within 20 days thereafter at the Clerk's Office of the United States District Court for the Western District of Pennsylvania to answer a bill of complaint filed by the United States of America on May 16, 1912, together with copies of a petition filed by Aluminum Company of America on April 29, 1937, and a restraining order granted by United States District Judge Robert M. Gibson April 29, 1937, ordering that said attorneys for the United States be made parties defendant to the proceeding entitled United States of America v. Aluminum Company of America (Equity No. 159, filed in the District Court of the United States for the Western District of Pennsylvania May 16, 1912), and further ordering that said attorneys for the United States be jointly and severally temporarily restrained from prosecuting or proceeding in any way whatsoever in the suit which they caused to be instituted in the District Court of the United States for the Southern District of New York on April 23, 1937, and further order-[fol. 213] ing them to show cause at 9 A. M., May 7, 1937, why a preliminary injunction of like tenor should not be issued against them, and further ordering that subpœnas be issued to be served in accordance with law by the marshals of the respective districts in which said attorneys reside or may be found.

3. That on May 1, 1937, a similar alleged service was made upon John W. Aiken, Special Assistant to the Attorney General, in the District of Columbia; and that on

May 3, 1937, a similar alleged service was made in the Southern District of New York upon Lamar Hardy, United States Attorney, by a deputy marshal of the Southern District of New York, accompanied by said William J. Rittinger, Deputy Clerk.

4. That he is informed by said attorneys and believes that neither at the time when said restraining order of April 29, 1937 was granted nor at the time of the alleged services of the subpœnas were any of said attorneys for the United States citizens or inhabitants of, or residents within, or found within, said Western District of Pennsylvania.

5. That by reason of the foregoing, no proper service of the subpœnas was made upon any of said attorneys for the United States.

Walter L. Rice.

Subscribed and sworn to before me this 6th day of May, 1937. —— ——, Notary Public.

[fol. 214] IN UNITED STATES DISTRICT COURT

ORDER CONTINUING TEMPORARY RESTRAINING ORDER—Filed May 7, 1937

Now, to-wit, May 7th, 1937, the return day of the rule to show cause heretofore granted in the above entitled case on April 29, 1937, having arrived and the parties having been heard in person or by counsel, but the court not being ready to decide forthwith whether a preliminary injunction should be granted as prayed for by the Aluminum Company of America and desiring instead to take that question under advisement for more mature deliberation, It Is Ordered, Adjudged and Decreed that the temporary restraining order granted by this Court in the above entitled case on April 29, 1937, be and it hereby is continued in force for ten days from the date of this order.

Per Curiam, G.

[fol. 215] IN UNITED STATES DISTRICT COURT

PRELIMINARY INJUNCTION—Filed May 14, 1937

Now, to-wit, May 14, 1937, the return day of the rule to show cause heretofore granted in the above entitled case on April 29, 1937, having arrived, after hearing in which all parties were represented in person or by counsel, and after due consideration, and upon motion of counsel for the Aluminum Company of America, and it appearing that immediate and irreparable damage will be done unless this preliminary injunction is granted, It Is Ordered, Adjudged and Decreed that Homer S. Cummings, Attorney General of the United States, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Special Assistant to the Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney for the Southern District of New York, in their said official capacities, are hereby jointly and severally enjoined and prohibited, pending the final hearing and decision of this Court on the petition of the Aluminum Company of America filed in this Court in the above entitled case on April 29, 1937, from prosecuting or proceeding in any way whatsoever in the suit which they caused to be instituted in the District Court of the United States for the Southern District of New York at Equity No. 85-73, against the Aluminum Company of America or any of its 100% subsidiaries, to-wit: the Aluminum Cook-
[fol. 216] ing Utensil Company, Aluminum Ore Company, Aluminum Seal Company, Alcoa Power Company, Limited, Alton and Southern Railroad, Bauxite and Northern Railway Company, Carolina Aluminum Company, Cedars Rapids Transmission Company, Limited, Knoxville Power Company, Louisiana Terminal Company, Massena Securities Corporation, The Massena Terminal Railroad Company, Nantahala Power and Light Company, Ocean Dominion Steamship Corporation, The Republic Mining and Manufacturing Company, The St. Lawrence River Power Company, St. Louis and Ohio River Railroad, Surinaamsche Bauxite Maatschappij and The United States Aluminum Company, or against Arthur V. Davis, Roy A. Hunt, Edwin S. Fickes, George R. Gibbons, Robert E. Withers, C. B.

Fox, Safford K. Colby, Winthrop C. Neilson, George J. Stanley, Irving W. Wilson, David K. E. Bruce, George H. Clapp, Richard K. Mellon, Paul J. Urquhart, J. R. D. Huston, C. L. Lycette, or J. J. Demskie, in their capacities as officers or directors of the Aluminum Company of America, or of any of its 100% subsidiaries aforesaid, or against George G. Allen or Andrew W. Mellon, in their capacities as former directors of the Aluminum Company of America, and from permitting any other persons under their authority or control to do so; and they are further enjoined and prohibited pending the final hearing and decision of this Court herein as aforesaid from bringing in any court other than this Court any suit or proceeding against the Aluminum Company of America or against any of its aforesaid 100% subsidiaries or against any of its aforesaid offi- [fols. 217-220] cers or directors or former directors, in their capacities as such, raising the same issues as those involved in the above entitled suit in this Court and upon which this Court has passed judgment by its consent decree entered on June 7, 1912; bond to be approved by this Court to be given by the Aluminum Company of America in the sum of $50,000.

Per Curiam, Gibson, D. J.

[fol. 221] IN UNITED STATES DISTRICT COURT

OPINION

GIBSON, District Judge:

The court, after hearing and consideration, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Aluminum Company of America is a Pennsylvania corporation and its principal office is in the City of Pittsburgh, Pennsylvania, in which office its business is principally transacted.

2. On May 16, 1912, United States of America instituted a proceeding in equity against the Aluminum Company of America, being a petition filed in this court at No. 159 November Term, 1912, In Equity, in which Aluminum Com-

pany of America was charged with violations of the Sherman Antitrust Laws and equitable relief sought. On June 1, 1912, Aluminum Company of America filed its answer to the said petition. On June 7, 1912, upon motion of the United States of America, consented to by the Aluminum Company of America, a decree of this court was entered in said proceeding by the Hon. James S. Young, United States District Judge. The said decree has never been appealed from and still remains in full force and effect, as modified as hereinafter stated. On October 25, 1922, Aluminum Company of America filed in the aforementioned proceeding its petition to modify the aforementioned decree, so that nothing therein contained should be construed to enjoin or restrain it or any company or companies sub- [fol. 222] sidiary to or affiliated with it from at once or from time to time acquiring, holding, exercising all rights of ownership in and disposing of any interest or interests, either controlling or otherwise, in the capital stock or securities of two Norwegian corporations therein mentioned, or any properties, plants, power rights or contracts of said two corporations then or thereafter acquired by them or either of them, or in any corporation or corporations or unincorporated associations, companies or partnerships which may at any time be organized or formed to take over the whole or any part of the capital stock, securities, rights or properties of said two Norwegian corporations or either of them. On October 25, 1922, with the consent of the plaintiff, acting by the then Attorney General of the United States, the aforementioned decree of this court was modified by a supplemental decree in accordance with the prayers of the aforementioned petition for modification.

3. On April 23, 1937, Homer S. Cummings, Attorney General of the United States, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Special Assistant to the Attorney General, Walter L. Rice, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney, acting in their capacities as attorneys and agents of the United States of America, instituted in the District Court of the United States in the Southern District of New York a proceeding in equity, No. 85-73 in which the United States of America is plaintiff and Aluminum Company of America and others

[fol. 223] are defendants by filing on said date in said court a petition, a copy of which has been offered in evidence in this proceeding.

The said proceeding in the District Court of the United States for the Southern District of New York is hereinafter referred to as the New York suit.

4. The subject matter and issues in the suit pending in this court, hereinbefore mentioned in finding of fact No. 2, and in the New York suit are substantially identical.

5. The decree of this court, hereinbefore mentioned in finding of fact No. 2, is binding upon both the United States of America and the Aluminum Company of America, and by its terms it is binding also upon all the officers, agents and representatives of the Aluminum Company of America. The following 100 per cent subsidiaries of Aluminum Company of America were named as defendants in the New York suit, to wit, the Aluminum Cooking Utensil Company, Aluminum Ore Company, Aluminum Seal Company, Alcoa Power Company, Limited, Alton and Southern Railroad, Bauxite and Northern Railway Company, Carolina Aluminum Company, Cedars Rapids Transmission Company, Limited, Knoxville Power Company, Louisiana Terminal Company, Massena Securities Corporation, The Massena Terminal Railroad Company, Nantahala Power and Light Company, Ocean Dominion Steamship Corporation, The Republic Mining and Manufacturing Company, The St. Lawrence River Power Company, St. Louis and Ohio River Railroad, Surinaamsche Bauxite Maatschappij and The [fol. 224] United States Aluminum Company and are agents and representatives of the Aluminum Company of America. Franklin Fluorspar Company, named as a defendant in the New York suit, was dissolved in 1935 and its assets distributed to Aluminum Ore Company, the owner of all of its capital stock. The capital stock of the Aluminum Ore Company was at that time and is still owned in its entirety by the Aluminum Company of America. The following named individual persons named as defendants in the New York suit are officers or directors of the Aluminum Company of America, to wit, Arthur V. Davis, Roy A. Hunt, Edwin S. Fickes, George R. Gibbons, Robert E. Withers, C. B. Fox, Safford K. Colby, Winthrop C. Neilson, George J. Stanley, Irving W. Wilson, David K. E. Bruce, George H. Clapp, Richard K. Mellon, Paul J. Urquhart, J. R. D. Huston, C. L.

Lycette, and J. J. Demskie. The aforementioned individuals hold the following positions as officers and directors of the Aluminum Company of America: Arthur V. Davis, Director and Chairman of the Board; Roy A. Hunt, Director and President; Edwin S. Fickes, Director and Senior Vice President in charge of engineering; George R. Gibbons, Director, Senior Vice President, Secretary, in charge of sales, advertising and promotional work; Robert E. Withers, Director and Senior Vice President in charge of finance, and Treasurer; C. B. Fox, Vice President in charge of alumina operations; Safford K. Colby, Vice President in charge of advertising and promotional work; Winthrop C. Neilson, Vice President in charge of bauxite operations; George J. Stanley, Vice President in charge of sales; Irving W. Wil- [fol. 225] son, Vice President in charge of production and fabrication; David K. E. Bruce, Director; George H. Clapp, Director; Richard K. Mellon, Director; Paul J. Urquhart, Vice President in charge of accounting; J. R. D. Huston, Assistant Secretary and Assistant Treasurer; C. L. Lycette, Assistant Secretary; J. J. Demskie, Assistant Treasurer. George G. Allen, named as a defendant in the New York suit, until 1936 was a director of Aluminum Company of America. Andrew W. Mellon, named as a defendant in the New York suit, was a director of Aluminum Company of America at the time of the entry of the aforementioned decree of this court and thereafter until 1921. Alvah K. Lawrie, named as a defendant in the New York suit, was formerly a director of the Aluminum Company of America and died in December, 1936.

6. By its terms the aforementioned decree of this court enjoins and restrains the Aluminum Company of America, its officers, agents and representatives from performing any acts contrary thereto not only at the time it was entered and now but also in the future.

7. All of the officers of Aluminum Company of America hereinbefore mentioned in Finding of Fact No. 5 are employed regularly at the principal office of the said company in Pittsburgh, Pennsylvania, in the discharge of their duties, except as follows: C. B. Fox performs his duties at St. Louis, Missouri, Winthrop C. Neilson resides at Phila-

delphia, Pennsylvania, and Arthur V. Davis is usually in New York City, New York, from Friday or Saturday morning until Monday night of each week but the rest of his time [fol. 226] as an officer of said Aluminum Company of America usually is spent at the principal office of said company in Pittsburgh, Pennsylvania.

8. The principal office of the Aluminum Company of America in the City of Pittsburgh, Pennsylvania, occupies one hundred fifteen rooms in the Gulf Building, comprising an aggregate of 50,500 square feet of floor space in said building. The Aluminum Company of America employs 376 persons in its aforementioned principal office at Pittsburgh, Pennsylvania, 119 of whom are employed in its Accounting Department. Practically all of the active records of Aluminum Company of America are kept in that building, including, among other records, the accounting records, correspondence records and contracts. The records of the company occupy about 4,200 lineal feet of space in the said principal office of Aluminum Company of America in Pittsburgh, Pennsylvania. These records necessitate the employment of between twenty and thirty filing clerks. There are added to the records of the Aluminum Company of America about one and a quarter million letters a year. The Aluminum Company of America has built a fireproof building located at the City of New Kensington, Pennsylvania, which is about eighteen miles from Pittsburgh, Pennsylvania, for the storage of records and when the records of the company overcrowd the space available for their storage at the principal office of the company in Pittsburgh, Pennsylvania, they are transferred to New Kensington in this storage vault. The storage space occupied by the books [fol. 227] and records of the company in its storage vault at New Kensington, Pennsylvania, aggregates about 13,900 feet. It is necessary for the company in the conduct of its business to refer constantly to its records at its principal office and in the City of New Kensington.

9. If the Aluminum Company of America is required to defend the New York suit in New York City, such defense will necessarily require constant reference to the books and records of Aluminum Company of America and the production of many of them at the trial. It will further require many of the officers and employees of the Aluminum Com-

pany of America to depart from its principal office in the City of Pittsburgh, Pennsylvania, where their duties are performed, to attend and assist at the trial in New York. By reason of these facts, the defense of said suit by Aluminum Company of America will be hampered and interfered with and the business of Aluminum Company of America will be seriously injured by requiring the removal of its books and records from its principal office and the further necessity of having many of its officers and employees leave their duties at its principal office to attend upon or assist in the trial in New York, and it will be very difficult to make a prompt and thorough reference to the records of the said company in the defense of the New York suit and at the same time properly conduct the company's business.

10. The Aluminum Company of America, its officers, agents and representatives are faced with the immediate necessity of engaging counsel in the City of New York to represent them in the New York suit, to begin to prepare [fol. 228] their defense to said suit and to file their answers and make their defense therein. This will entail a complete and comprehensive examination by New York counsel of the affairs of said company extending back at least as far as the year 1902.

11. The Aluminum Company of America, its officers, agents and representatives are threatened with immediate and irreparable injury as the result of the facts hereinbefore found.

Conclusions of Law

I. The subject matter and issues in the suit pending in this court and raised by the petition of the United States in the New York suit are substantially the same. Every paragraph of the petition of the United States in the New York suit beginning with paragraph 40 and ending with paragraph 102 (Paragraphs 1 to 39, both inclusive, and paragraph 103, being purely descriptive of the parties, the industry or the relief sought) state situations which, if true, violate the aforementioned decree of this court.

II. The jurisdiction of this court over the subject matter and the parties aforementioned, having first attached and having been followed by its decree, is complete and ex-

clusive, and such jurisdiction should be protected and preserved until the duty of this court has been fully performed.

III. Because of the action of the United States of America in filing its petition against the Aluminum Company of America in this court and the entry of the decree of this [fol. 229] court pursuant to said petition and answer filed, which, as amended, is still in full force and effect and applies both to present and future acts, the United States of America is without legal or equitable right further to proceed against the Aluminum Company of America and its wholly owned subsidiary companies and its present or former officers and directors acting in their official capacities, by bringing and maintaining the New York suit and thus subjecting them to the peril of two decrees existing at the same time in two separate and independent courts of the United States, affecting the same subject matter and issues.

IV. The 100% subsidiaries of Aluminum Company of America named in Finding of Fact No. 5 are agents and representatives of Aluminum Company of America and as such are bound by the terms of the aforementioned decree of this court; the officers and directors of Aluminum Company of America named in said finding are bound by the terms of said decree of this court and George G. Allen, while a director of Aluminum Company of America, and Andrew W. Mellon, while a director of said company, were bound by the terms of the said decree of this court.

V. If the United States of America is entitled to the relief prayed for in the New York suit, it can obtain the same upon proper application to this court, this court having full power to modify its decree heretofore entered, by force of principles inherent in the jurisdiction of the chancery, a continuing decree of injunction directed to events to come being [fol. 230] subject always to adaptation as events may shape the need.

VI. The Aluminum Company of America is threatened with immediate and irreparable injury by the action of the United States in filing its petition in the New York suit.

VII. This court is empowered and it is its duty to protect its jurisdiction by enjoining in their official capacities the officials of the United States of America who are prosecuting the New York suit against the Aluminum Company of

America, to wit, the said Homer S. Cummings, as Attorney General of the United States, the said Robert H. Jackson, as Assistant Attorney General of the United States, the said Wendell Berge, as Special Assistant to the Attorney General of the United States, the said Walter L. Rice, as Special Assistant to the Attorney General of the United States, the said John W. Aiken, as Special Assistant to the Attorney General of the United States, the said F. Gwyn Harper, Jr., as Special Attorney for the United States, the said N. A. Townsend, Jr., as Special Attorney for the United States, and the said Lamar Hardy, as United States Attorney in the Southern District of New York, from prosecuting the said New York suit against the Aluminum Company of America, its 100% subsidiaries and its present and past officers and directors in their official capacities, pending final hearing herein.

[fol. 231] DISCUSSION

On April 23, 1937, the United States, represented as counsel in their official capacities by Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Walter L. Rice and John W. Aiken, Special Assistants to the Attorney General, Special Attorneys N. A. Townsend, Jr., and F. Gwyn Harper, Jr., and Lamar Hardy, United States Attorney for the Southern District of New York, filed a petition in equity in the Southern District of New York wherein the Aluminum Company of America, a number of its subsidiaries, and certain present or past officers of the Aluminum Company, or its subsidiaries, were charged with violations of the Sherman Antitrust Act, and the court was prayed to grant injunctive relief and to order that the Aluminum Company be dissolved.

On April 29, 1937, the Aluminum Company of America filed its petition in this court at No. 159 November Term, 1912, wherein it set forth the existence of a proceeding in this court, at that number and term, which had been instituted by the then Attorney General and in which practically the same charge had been made as was put forth in the bill in the Southern District of New York. This proceeding had proceeded to the point of a consent decree, it was further recited, in which practically the same injunctive relief had been granted as was prayed in the New

York petition, but in which was no decree ordering the dissolution of the Company. The Aluminum Company claimed, in view of the facts set forth, that jurisdiction [fol. 232] over the subject matter of the New York action was in this court, not in the District Court for the Southern District of New York, and prayed injunctive relief against the Attorney General and his Assistants.

Pursuant to the petition of the Aluminum Company, upon proper showing, this court granted a temporary restraining order and fixed May 7, 1937 as the date for hearing thereon. In its petition the Aluminum Company sought to join the Attorney General and his Assistants, supra, as parties to the action in this District, and subpoenas upon them were issued. They were also served with notices of the restraining order.

Upon the return day of the temporary restraining order Robert H. Jackson, Assistant Attorney General, and Walter L. Rice, Special Assistant to the Attorney General, appeared specially and moved the court to quash the service of the subpoenas, set aside the return thereon, dismiss the defendant's petition and vacate the restraining order. After argument this motion was taken under advisement, and testimony was heard on the part of the Aluminum Company in support of its petition for a preliminary injunction. The representatives of the Attorney General were allowed to participate in this hearing without prejudice to their rights under the motion.

The service of notices of the restraining order and of the subpoenas was made, not in this District, but in Washington, D. C., and in New York. While this is given as the basis of the motion, it in turn is founded upon the verbal contention that the original proceeding in this District is [fol. 233] dead, by reason of the length of time between the present and the date of the consent decree, June 7, 1912.

If it were to be admitted that this contention is sound, then no question can exist as to the power of the Attorney General to institute the action in the Southern District of New York. The Congress has given him the power, deprecated though its exercise may be at times, to bring such a suit in any District in which the defendant transacts business. But we have been unable to find any statute or other authority which places any limit upon the life of a perpetual injunction or upon the time during which the

jurisdiction of the court issuing it shall endure. On the contrary, a number of cases may be cited in which parties have, by supplemental bill or petition, applied to the court of original jurisdiction for more drastic enforcement, or modification, of the decree long after its issuance. An example is United States v. Standard Oil Company of New Jersey, 47 F. (2d) 288. By the original decree, in 1911, the Standard Oil Company of New York and the Vacuum Oil Company were two of the companies separated. About twenty years later the two companies sought to merge. The Attorney General filed a supplemental petition in the court of original jurisdiction to enjoin the merger. This petition was denied, but without any question by the court as to the propriety of the procedure. Again, the United States, some years after the injunctive decree had been granted in United States v. International Harvester Co., 274 U. S., 693, proceeded by supplemental petition in an attempt to amend the original decree and secure the dis- [fol. 234] solution of the Harvester Company. And again no question was raised as to the propriety of the procedure. The anti-trust decree against the large meat packers was entered in 1920. Ten years later Swift & Co., an original defendant, filed a petition for a modification of the original decree. The court held, opinion by Mr. Justice Cardozo, that the existing decree could be altered only upon a showing of changed conditions. It is patent that no court other than the court of original jurisdiction could determine whether conditions had changed.

In United States v. Swift & Co., supra, Mr. Justice Cardozo mentioned the fact that power to modify the decree had been reserved, but stated: "If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of chancery."

Having reached the conclusion that mere passage of time is not sufficient to deprive a court of jurisdiction over the subject matter of its original decree, as we have, the next matter for consideration is whether or not any close relation exists between the subject matter of the New York petition and that of the bill in this District. An examination of the two pleadings will disclose their substantial identity in many respects. The New York petition, it is true, is filed against a number of subsidiaries of the Aluminum Company of America and a number of individual

officers. But no question exists as to what is the parent body, and all defendants could be brought in to the original suit by supplemental bill under the provisions of Section 15 of the Clayton Act (15 U. S. C. A., Sec. 25). The [fol. 235] New York petition recites, among the specific acts of the defendant in alleged violation of the Sherman Anti-Trust Act, many of the same specific acts charged in the original petition. The injunctive relief granted in the decree in this District might well answer all the prayers of the New York petition except that for the dissolution of the Company. Dissolution of the defendant, it will be remembered, was made the subject matter of a supplemental bill in United States v. International Harvester Co., supra.

A conclusion that the original proceeding still has force and effect, and that the New York petition presents nothing other than additional outgrowth of the original matter in the petition in this District, seems to force this court to deny the motion of the representatives of the Attorney General and to grant the preliminary injunction prayed. See Looney v. Eastern Texas R. R. Co., 247 U. S. 214.

The present petition of the Aluminum Company is not an independent action against the United States or its legal representatives, but is merely ancillary to the original action in which the United States has submitted itself to the court by the institution of its suit therein. The Government and its counsel are already in court, in theory, and this being so, all that is necessary is that its legal representatives receive due notice of the supplementary proceeding instituted; and such notice may be given without reference to their citizenship or residence. That the original counsel have been succeeded by others does not change the situation. [fol. 236] The successors are in privity with their predecessors. New Orleans v. Citizens Bank, 167 U. S. 371.

As illustrative of principles involved in the instant question is the case of Georgia Power Co. v. Tennessee Valley Authority, 17 Fed. Supp. 769. The plaintiff had filed a bill in the Northern Georgia District wherein it prayed, inter alia, a preliminary injunction against the defendant. Upon hearing this prayer was denied. Thereupon plaintiff filed a like bill in the Middle District of Tennessee. The District Court for the Northern District of Georgia then enjoined the plaintiff from proceeding with the latter action.

The court, Underwood, D. J., felt, as we feel in the instant case, that it is the duty of the court of original jurisdiction to preserve that jurisdiction in the interest of orderly procedure. This ruling of the Georgia Court has been sustained upon appeal by the Circuit Court of Appeals for the Fifth Circuit.

A preliminary injunction will issue, as prayed in the defendant's petition, and the motion of the Assistant Attorney General and the Special Assistant to the Attorney General will be denied.

[fol. 237] IN UNITED STATES DISTRICT COURT

ORDER REFUSING MOTION TO QUASH SERVICE, ETC.

And now, to wit, May 14, 1937, the motion of Robert H. Jackson, Assistant Attorney General, and Walter L. Rice, Special Assistant to the Attorney General, to quash service, set aside return, dismiss Defendant's petition and vacate restraining order having come on to be heard, upon consideration thereof, it is ordered, adjudged and decreed that said petition be, and the same hereby is, refused.

Per Curiam Gibson, D. J.

Exception

Exception to the foregoing order is noted to the petitioners and bill sealed.

R. M. Gibson, District Judge. (Seal.)

[fol. 238] IN UNITED STATES DISTRICT COURT

ANSWER—Filed June 3, 1937

Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., former Special Attorney, and Lamar Hardy, United States Attorney for the Southern District of New York (hereinafter collectively called Government counsel), who were made parties defend-

ant in their capacities as attorneys and agents of the United States of America, in the above entitled proceeding, by an order issued by this Court ex parte upon petition of defendant Aluminum Company, April 29, 1937, reserving all rights of exception to said petition and order and to the order of this Court entered May 14, 1937, overruling the special appearance filed for said Government counsel and denying their motion to vacate service of process upon them, submit the following answer to said petition of defendant Aluminum Company:

1. Deny that all of the books and records of Aluminum Company are kept in Pittsburgh, Pennsylvania, and admit all other allegations of paragraph 1 of said petition.

2. Admit all of the allegations of fact contained in paragraph 2 of said petition.

3. Admit the allegations of paragraph 3 of said petition.

[fol. 239] 4. Deny that the subject matter and issues in the first suit and in the New York suit are identical, and aver that the suit filed in New York April 23, 1937 involves a substantially different subject matter, different issues and different parties from the suit filed in the Western District of Pennsylvania May 16, 1912, as more fully appears in the pleadings on file in this Court.

5. Deny any implication that the consent decree entered in this Court June 7, 1912 is a contract between the United States of America and defendant Aluminum Company, or that said consent decree is binding upon the United States of America in any contractual sense, and admit all other allegations of fact in paragraph 5 of said petition.

6. Admit that the original petition filed by the United States of America in this Court May 16, 1912 contains the allegations and prayer contained in the copy thereof which has been substituted for the original and is now on file with the Clerk of this Court, and deny all other allegations of paragraph 6 of said petition of defendant Aluminum Company.

7. Admit that defendant Aluminum Company filed an answer to the original petition of May 16, 1912, in the form in which it appears in the copy which has been substituted

for the original answer, which copy is now on file with the Clerk of this Court.

8. Admit that a consent decree was filed in this Court June 7, 1912 containing the provisions which appear in the copy which has been substituted for the original and is now on file with the Clerk of this Court, and deny any other [fol. 240] allegations and argumentative statements in paragraph 8 of said petition of defendant Aluminum Company.

9. Admit that the United States of America is entitled to further relief against defendant Aluminum Company upon proper application to this Honorable Court, and that this Court has full power to modify the consent decree of June 7, 1912 and that said consent decree is subject always to adaptation as events may shape the need, but deny any implication that the subject matter of the New York suit is substantially identical with the subject matter of the suit filed in this Court May 16, 1912 or that the United States of America is entitled to the relief prayed for in the New York suit by making application to this Court under the original petition filed in this Court May 16, 1912, and deny all other allegations of paragraph 9 of said petition of defendant Aluminum Company.

10. Deny that jurisdiction over the subject matter of the New York suit first attached in this Court or that this Court has complete or exclusive or any jurisdiction whatever over said subject matter, or that this Court should endeavor to protect or preserve jurisdiction over any subject matter which it does not possess.

11. Deny that unless said Government counsel are enjoined Aluminum Company and its 100 per cent subsidiaries and its present or former officers and directors will be required immediately to engage any counsel to represent them in the New York suit in addition to the Pittsburgh and New York counsel who have already been engaged in the New York suit.

[fol. 241] 12. Deny each of the allegations of paragraph 12 of said petition, and aver that said petition sets forth no facts showing that Aluminum Company will suffer immediate or irreparable injury unless said Government coun-

sel are restrained and enjoined from proceeding further in the New York suit.

13. For a further and separate defense to the allegations contained in said petition filed by defendant Aluminum Company, said Government counsel allege that they are not citizens or inhabitants of, or residents within, the Western District of Pennsylvania, and were not served with process within the Western District of Pennsylvania, that in instituting the suit in New York they have acted properly and lawfully and within the scope of their duties under the Constitution and laws of the United States in their respective capacities as representatives of the United States of America, and this Court has no power to restrain or enjoin them or the United States of America, and that this district is not the proper venue for the subject matter of the proceeding initiated by defendant Aluminum Company April 29, 1937.

Having thus made a full answer to all of the allegations contained in the petition filed by defendant Aluminum Company April 29, 1937, said Government counsel pray that said petition be dismissed, that the service of process upon them be quashed, that the marshals' returns be set aside, that the preliminary injunction issued May 14, 1937 be vacated, and that defendant Aluminum Company pay costs of this litigation incurred by the United States of America [fol. 242] on behalf of said Government counsel.

Robert H. Jackson, Assistant Attorney General; Walter L. Rice, Special Assistant to the Attorney General, Solicitors for Homer S. Cummings, Attorney General; Robert H. Jackson, Assistant Attorney General; Walter L. Rice, Special Assistant to the Attorney General; John W. Aiken, Special Assistant to the Attorney General; Wendell Berge, Special Assistant to the Attorney General; F. Gwyn Harper, Jr., Special Attorney; N. A. Townsend, Jr., Former Special Attorney, and Lamar Hardy, United States Attorney.

June 3, 1937.

[fol. 243] *Duly sworn to by Walter L. Rice. Jurat omitted in printing.*

[fol. 244] IN UNITED STATES DISTRICT COURT

EXPEDITING CERTIFICATE OF THE ATTORNEY GENERAL OF THE UNITED STATES—Filed June 8, 1937

To the Clerk of said Court:

I, Homer Cummings, Attorney General of the United States, hereby certify that the above entitled cause instituted in this Court on May 16, 1912 is a suit in equity brought by the United States against Aluminum Company of America under the Act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (26 Stat. 209), and that in my opinion this cause recently has become a case of general public importance requiring the prompt consideration of at least three judges comprising an Expedition Court, for the following reasons:

1. On April 29, 1937, on application of defendant Aluminum Company of America, a District Judge of this Court without any notice whatever to the United States of America entered an ex parte order in this suit making Homer Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney, "parties defendant" in their capacities as attorneys and agents of the United States. The order restrained them from prosecuting or pro-
[fol. 245] ceeding in any way whatsoever in the suit which they had caused to be instituted under the Antitrust Laws in the Southern District of New York on April 23, 1937 against Aluminum Company of America and 62 other defendants.

2. On May 14, 1937 the aforesaid District Judge of this Court issued a preliminary injunction, enjoining said Government counsel from prosecuting or proceeding in any way whatsoever in the suit against the Aluminum Company of America, 19 subsidiaries, 17 officers and directors, and George G. Allen and Andrew W. Mellon, former directors. The order also enjoined Government counsel "from bringing in any court other than this Court any suit or proceed-

ing against the Aluminum Company of America" or its subsidiaries, officers or directors, allegedly raising the same issues as those said to have been passed upon by the consent decree entered in this Court June 7, 1912 in the suit against Aluminum Company of America.

3. In issuing the preliminary injunction on May 14, 1937, said District Judge overruled a special appearance filed on behalf of Government counsel by Robert H. Jackson, Assistant Attorney General, and Walter L. Rice, Special Assistant to the Attorney General, and held that he had jurisdiction over Government counsel by virtue of the fact that the United States had submitted itself to the jurisdiction of this Court by the institution of an Antitrust suit in the Western District of Pennsylvania against a single defendant, Aluminum Company of America, on May 16, 1912. Said District Judge found that the subject matter and issues in the 1912 suit were "substantially identical" with [fol. 246] those presented in the suit filed in New York a quarter of a century later, despite the fact that the 1912 suit named only one of the 63 defendants named in the New York case, and did not involve the vital question of dissolution of Aluminum Company of America, but merely sought injunctive relief against certain unfair practices and cancel-ation of four restrictive contracts and an agreement entered into in 1908 with the Swiss Aluminum Company.

4. The New York suit which has been obstructed by the aforesaid orders deals with a completely entrenched monopoly of a large and fully developed industry, controlled by a single corporation with assets of $222,980,846, whereas the consent decree of 1912 entered in this Court dealt with certain monopolistic and restrictive practices in an industry relatively in its infancy. The principal allegations in the New York petition relate to unfair and monopolistic tactics pursued by the 63 defendants since 1912. For example, it alleges that commencing in 1921 the Aluminum Company of America acquired aluminum plants and raw material in European countries for the purpose of intimidating foreign competitors who might otherwise ship aluminum to the United States to be sold in competition with Aluminum Company of America. It also alleges that in 1931 Aluminum Limited, a Canadian corporation organized by Aluminum Company of America in 1928 to evade the

Antitrust Laws, entered into an important world cartel agreement with the French, British, Swiss and German aluminum companies to restrict production and fix prices. The Petition charges that Aluminum Company of America [fol. 247] has a 100 per cent monopoly of virgin aluminum manufactured in the United States, a 90 per cent monopoly of aluminum sheet, a 95 per cent monopoly of aluminum alloys, and virtually a 100 per cent monopoly of extruded and structural shapes, wire, cable, bars, rods and tubing made from aluminum.

5. The result of the ex parte order of April 29, 1937 and the preliminary injunction of May 14, 1937, issued by said District Judge of this Court, has been to obstruct the prosecution of one of the most complete and far reaching monopolies which has ever developed in a large industry of this country. The consent decree of 1912 has been distorted into an instrument under which the Aluminum Company of America maintains a vested right of immunity from monopoly prosecutions in any court other than the Western District of Pennsylvania.

I therefore request that, complying with the provisions of the Act of Congress entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies' ", approved February 11, 1903, as amended by the Act of Congress approved June 25, 1910, and the Act of March 3, 1911 (U. S. C., Title 15, Sec. 28), you file this certificate among the records of the above entitled cause, and immediately furnish a copy thereof to each of the Circuit Judges of the Third Circuit, to the end that this case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day before not less than three of the [fol. 248] Circuit Judges of said Circuit or such Circuit and District Judges in the Third Circuit as may be designated, as provided in said Act of February 11, 1903, as amended.

In filing this certificate I expressly reserve all rights of exception to the ex parte order of this Court entered April 29, 1937, making said Government counsel "parties defendant", and to the order entered May 14, 1937 overruling the special appearance filed for said Government counsel

and denying their motion to vacate service of process upon them.

Homer Cummings, Attorney General.

Washington, D. C., June 7, 1937.

[fol. 249] IN UNITED STATES DISTRICT COURT

ORDER ON EXPEDITING CERTIFICATE—Entered June 14, 1937

The Attorney General of the United States having filed an Expediting Certificate with the Clerk of the District Court for the Western District of Pennsylvania, certifying that the above-entitled cause instituted May 16, 1912, is a suit in equity brought by the United States against Aluminum Company of America, under the Act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (26 Stat. 209), and that in his opinion this cause recently has become a case of general public importance requiring the prompt consideration of at least three judges comprising an Expedition Court under the Act of February 11, 1903 as amended (U. S. C. Title 15, Sec. 28):

And it further appearing from the pleadings on file in this case that on April 29, 1937, on application of defendant Aluminum Company of America, a District Judge of the Western District of Pennsylvania entered an ex parte order in this suit making Homer Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney, "parties defendant" in their capacities as attorneys and agents of the United States, and restraining them from [fol. 250] prosecuting or proceeding in any way whatsoever in the suit which they had caused to be instituted under the Antitrust Laws in the Southern District of New York on April 23, 1937 against Aluminum Company of America and 62 other defendants;

And it further appearing that on May 14, 1937, the said District Judge issued a preliminary injunction, enjoining

said Government counsel from prosecuting or proceeding in any way whatsoever in the suit against the Aluminum Company of America, 19 subsidiaries, 17 officers and directors, and George G. Allen and Andrew W. Mellon, former directors, and "from bringing in any court other than this Court any suit or proceeding against the Aluminum Company of America" or its subsidiaries, officers or directors, raising the same issues as those passed upon by the consent decree entered in this cause June 7, 1912;

And it further appearing that on April 23, 1937, said Government counsel instituted a suit on behalf of the United States under the Antitrust Laws in the Southern District of New York against Aluminum Company of America and 62 other defendants, charging them with monopoly and conspiracies to restrain and monopolize trade and commerce, and praying for a dissolution of Aluminum Company of America and said alleged monopoly; and that said Government counsel have been enjoined by said preliminary injunction pending final hearing from proceeding further against certain of the 63 defendants in said suit including Aluminum Company of America;

[fol. 251] Now, Therefore, after hearing counsel for the United States and counsel for Aluminum Company of America and others, on motion of Walter L. Rice, Special Assistant to the Attorney General, it is hereby Ordered that the issues of fact and law raised by the above mentioned petition and order of April 29, 1937, and by the answer to said petition, and by the preliminary injunction of May 14, 1937, and by the order of May 14, 1937 denying the motion of Government counsel to quash service, and by the Attorney General's motion for a special Expediting Court, and by the objections of Aluminum Company of America and others to that motion, be assigned for hearing before the available Circuit Judges of Third Circuit, sitting at Trenton, New Jersey, at 10:00 o'clock A. M. Eastern Standard Time, June 23, 1937, and that the case be given precedence over other cases and be in every way expedited, and that the following Circuit Judges be designated to comprise the Special Expedition Court under said Act of February 11, 1903:

Circuit Judge J. Warren Davis,
Circuit Judge J. Whitaker Thompson,
Circuit Judge John Biggs, Jr.;

the foregoing being subject to the right of Aluminum Company of America and other defendants to object to the jurisdiction to create said Special Expedition Court and all other rights of said Aluminum Company of America and other defendants.

It is Further Ordered that William P. Rowland, Clerk of the Circuit Court of Appeals for the Third Circuit be designated as Clerk of said Special Expedition Court, and [fol. 252] that the records in this cause on file with the Clerk of the Western District of Pennsylvania be transmitted to said William P. Rowland and remain in his possession as Clerk of said Special Expedition Court pending final determination of the issues now pending in this cause.

J. W. Thompson, United States Circuit Judge.
John Biggs, Jr., United States Circuit Judge.

Philadelphia, Pa., June 14, 1937.

And now, June 14, 1937, an exception is noted to the foregoing order to Aluminum Company of America, its subsidiaries, and its present and former directors and officers and bill sealed.

J. W. Thompson, United States Circuit Judge. (Seal.) John Biggs, Jr., United States Circuit Judge. (Seal.)

[fol. 253] IN UNITED STATES DISTRICT COURT

[Title omitted]

OBJECTIONS OF ALUMINUM COMPANY OF AMERICA TO CREATION OF EXPEDITING COURT, ETC.

And now, June 23, 1937, Aluminum Company of America respectfully makes the following objections:

1. Aluminum Company of America objects to the creation of a special expediting court at this time in this case for the following reasons: The expediting certificate of the Attorney General executed under date of June 7, 1937, and filed in the District Court of the United States for the Western District of Pennsylvania on June 8, 1937, closes with the following reservation:

"In filing this certificate I expressly reserve all rights of exception to the ex parts order of this Court entered April 29, 1937, making said Government counsel 'parties defendant', and to the order entered May 14, 1937 overruling the special appearance filed for said Government counsel and denying their motion to vacate service of process upon them."

The special appearance above mentioned was entered on the ground that this Court has no jurisdiction over the Attroney General and other law officers of the United States whose names are mentioned in the special appearance and that the Western District of Pennsylvania is not the proper venue. The motion to quash service was made on the ground that this Court has no jurisdiction over the said Attorney General and other law officers of the United States for the reason that none of them are citizens or inhabitants of or residents of or found within said Western District of Pennsylvania.

On June 14, 1937, Walter L. Rice, Special Assistant to [fol. 254] the Attorney General, in presenting to the Judges of the United States Circuit Court of Appeals for the Third Circuit, the oral motion of the Attorney General for the appointment of a special expediting court stated to the Judges that Government counsel wished to still preserve their special appearance entered in the United States District Court for the Western District of Pennsylvania.

By the above mentioned reservation in the expediting certificate and by the above mentioned statement of Walter L. Rice the Attorney General and said other law officers of the United States are maintaining the position that this Court has no jurisdiction over them. In the order creating the special expediting court one of the issues assigned for hearing is the issue of fact and law raised "by the order of May 14, 1937, denying the motion of Government counsel to quash service" • • •.

The Attorney General and said other law officers of the United States are thus improperly maintaining that they have the right to have a special expediting court created and to proceed therein and to participate in the final hearing, on the merits, upon the question whether a final decree of injunction is to be entered upon the application of Aluminum Company of America therefor, and that, at the same

time, they have the right to insist that the expediting court has no jurisdiction over them. If on said final hearing the injunction sought by Aluminum Company of America is denied, the Attorney General and said other law officers of the United States propose immediately to leave the Third Circuit, leaving the expediting court without any case to try, and to proceed into the Second Circuit and there try a case involving the same subject matter and issues against the Aluminum Company of America and others. The decree entered June 7, 1912, in the above entitled case granted to the United States of America all the relief the latter was [fol. 255] entitled to on the record as it stood then. There has been no change in the record in this respect. The United States of America has made no application to this Court to modify or extend the decree of June 7, 1912, nor has the United States of America taken any proceeding in this Court for additional relief.

Aluminum Company of America will immediately withdraw this objection if the Attorney General and said other law officers of the United States, by withdrawing their special appearance or otherwise, will concede that they are amenable to the decrees of this Court, it being understood that this concession does not constitute any waiver of the position of the Attorney General and said other law officers that, by reason of their official positions, they are cloaked with immunity from suit and that the United States of America is likewise immune from suit.

2. For the reasons set forth in objection No. 1 Aluminum Company of America objects to the order entered in this case on June 14, 1937, creating the special expediting court and moves that the said order be vacated.

Aluminum Company of America will immediately withdraw this objection if the Attorney General and said other law officers of the United States, by withdrawing their special appearance or otherwise, will concede that they are amenable to the decrees of this Court, it being understood that this concession does not constitute any waiver of the position of the Attorney General and said other law officers that, by reason of their official positions, they are cloaked with immunity from suit and that the United States of America is likewise immune from suit.

3. For the reasons set forth in objection No. 1 Aluminum Company of America objects to the Attorney General and

other law officers of the United States being permitted to proceed and participate in the final hearing in this Court on the question whether Aluminum Company of America is entitled to an injunction.

[fol. 256] Aluminum Company of America will immediately withdraw this objection if the Attorney General and said other law officers of the United States, by withdrawing their special appearance or otherwise, will concede that they are amenable to the decrees of this Court, it being understood that this concession does not constitute any waiver of the position of the Attorney General and said other law officers that, by reason of their official positions, they are cloaked with immunity from suit and that the United States of America is likewise immune from suit.

If the Court shall overrule any of the foregoing objections, Aluminum Company of America respectfully requests that an exception to such action be noted and allowed to it.

William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Smith, Buchanan, Scott & Ingersoll, Solicitors for Alluminum Company of America.

[fol. 257] In United States District Court

[Title omitted]

Requests of Aluminum Company of America for Findings of Fact and Conclusions of Law

Aluminum Company of America respectfully requests the Court to make the following findings of fact:

1. Aluminum Company of America is a Pennsylvania corporation and its principal office is in the City of Pittsburgh, Pennsylvania, in which office its business is principally transacted.

[fol. 258] 2. On May 16, 1912, United States of America instituted a proceeding in equity against the Aluminum Company of America, being a petition filed in this court at No. 159 November Term, 1912, In Equity, in which Aluminum Company of America was charged with violations of the Sherman Antitrust Law and equitable relief sought. On June 1, 1912, Aluminum Company of America filed its

answer to the said petition. On June 7, 1912, upon motion of the United States of America, consented to by the Aluminum Company of America, a decree of this court was entered in said proceeding by the Hon. James S. Young, United States District Judge. The said decree has never been appealed from and still remains in full force and effect, as modified as hereinafter stated. On October 25, 1922, Aluminum Company of America filed in the aforementioned proceeding its petition to modify the aforementioned decree, so that nothing therein contained should be construed to enjoin or restrain it or any company or companies subsidiary to or affiliated with it from at once or from time to time acquiring, holding, exercising all rights of ownership in and disposing of any interest or interests, either controlling or otherwise, in the capital stock or securities of two Norwegian corporations therein mentioned, or any properties, plants, power rights or contracts of said two corporations then or thereafter acquired by them or either of them, or in any corporation or corporations or unincorporated associations, companies or partnerships which may at any time be organized or formed to take over the whole or any part of the capital stock, securities, rights or properties of said two Norwegian [fol. 259] corporations or either of them. On October 25, 1922, with the consent of the plaintiff, acting by the then Attorney General of the United States, the aforementioned decree of this court was modified by a supplemental decree in accordance with the prayers of the aforementioned petition for modification.

3. On April 23, 1937, Homer S. Cummings, Attorney General of the United States, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Special Assistant to the Attorney General, Walter L. Rice, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney, acting in their capacities as at- [fol. 260] torneys and agents of the United States of America, instituted in the District Court of the United States in the Southern District of New York a proceeding in equity, No. 85-73 in which the United States of America is plaintiff and Aluminum Company of America and others are defendants by filing on said date in said court a petition, a copy of which has been offered in evidence in this proceeding.

The said proceeding in the District Court of the United States for the Southern District of New York is hereinafter referred to as the New York suit.

[fol. 261] 4. The subject matter and issues in the suit pending in this court, hereinbefore mentioned in finding of fact No. 2, and in the New York suit are substantially identical.

5. The decree of this court, hereinbefore mentioned in finding of fact No. 2, is binding upon both the United States of America and the Aluminum Company of America, and by its terms it is binding also upon all the officers, agents and representatives of the Aluminum Company of America. The following 100 per cent. subsidiaries of Aluminum Company of America were named as defendants in the New York suit, to wit, the Aluminum Cooking Utensil Company, Aluminum Ore Company, Aluminum Seal Company, Alcoa Power Company, Limited, Alton and Southern Railroad, Bauxite and Northern Railway Company, Carolina Alumi-[fol. 262] num Company, Cedars Rapids Transmission Company, Limited, Knoxville Power Company, Louisiana Terminal Company, Massena Securities Corporation, The Massena Terminal Railroad Company, Nantahala Power and Light Company, Ocean Dominion Steamship Corporation, The Republic Mining and Manufacturing Company, The St. Lawrence River Power Company, St. Louis and Ohio River Railroad, Surinaamsche Bauxite Maatschappij and The United States Aluminum Company and are agents and representatives of the Aluminum Company of America. Franklin Fluorspar Company, named as a defendant in the New York suit, was dissolved in 1935 and its assets distributed to Aluminum Ore Company, the owner of all of its capital stock. The capital stock of the Aluminum Ore Company was at that time and is still owned in its entirety by the Aluminum Company of America. The following individual persons named as defendants in the New York suit are officers or directors of the Aluminum Company of America, to-wit, Arthur V. Davis, Roy A. Hunt, Edwin S. Fickes, George R. Gibbons, Robert E. Withers, C. B. Fox, Safford K. Colby, Winthrop C. Neilson, George J. Stanley, Irving W. Wilson, David K. E. Bruce, George H. Clapp, Richard K. Mellon, Paul J. Urquhart, J. R. D. Huston, C. L. Lycette, and J. J. Demskie. The aforementioned individ-

uals hold the following positions as officers and directors of the Aluminum Company of America: Arthur V. Davis, Director and Chairman of the Board; Roy A. Hunt, Director and President; Edwin S. Fickes, Director and Senior Vice President in charge of engineering; George R. Gibbons, [fol. 263] Director, Senior Vice President, Secretary, in charge of sales, advertising and promotional work; Robert E. Withers, Director and Senior Vice President in charge of finance, and Treasurer; C. B. Fox, Vice President in charge of alumina operations; Safford K. Colby, Vice President in charge of advertising and promotional work; Winthrop C. Neilson, Vice President in charge of bauxite operations; George J. Stanley, Vice President in charge of sales; Irving W. Wilson, Vice President in charge of production and fabrication; David K. E. Bruce, Director; George H. Clapp, Director; Richard K. Mellon, Director; Paul J. Urquhart, Vice President in charge of accounting; J. R. D. Huston, Assistant Secretary and Assistant Treasurer; C. L. Lycette, Assistant Secretary; J. J. Demskie, Assistant Treasurer. George G. Allen, named as a defendant in the New York suit, until 1936 was a director of Aluminum Company of America. Andrew W. Mellon, named as a defendant in the New York suit, was a director of Aluminum Company of America at the time of the entry of the aforementioned decree of this court and thereafter until 1921. Alvah K. Lawrie, named as a defendant in the New York suit, was formerly a director of the Aluminum Company of America and died in December, 1936.

[fol. 264] 6. By its terms the aforementioned decree of this court enjoins and restrains the Aluminum Company of America, its officers, agents and representatives from performing any acts contrary thereto not only at the time it was entered and now but also in the future.

7. All of the officers of Aluminum Company of America hereinbefore mentioned in Finding of Fact No. 5 are employed regularly at the principal office of the said company in Pittsburgh, Pennsylvania, in the discharge of their duties, except as follows: C. B. Fox performs his duties at St. Louis, Missouri, Winthrop C. Neilson resides at Philadelphia, Pennsylvania, and Arthur V. Davis is usually in New York City, New York, from Friday or Saturday morning until Monday night of each week but the rest of [fol. 265] his time as an officer of said Aluminum Company

of America usually is spent at the principal office of said company in Pittsburgh, Pennsylvania.

8. The principal office of the Aluminum Company of America in the City of Pittsburgh, Pennsylvania, occupies one hundred fifteen rooms in the Gulf Building, comprising an aggregate of 50,500 square feet of floor space in said building. The Aluminum Company of America employs 376 persons in its aforementioned principal office at Pittsburgh, Pennsylvania, 119 of whom are employed in its Accounting Department. Practically all of the active records of Aluminum Company of America are kept in that building, including, among other records, the accounting records, correspondence records and contracts. The records of the company occupy about 4,200 lineal feet of space in the said principal office of Aluminum Company of America in Pittsburgh, Pennsylvania. These records necessitate the em- [fol. 266] ployment of between twenty and thirty filing clerks. There are added to the records of the Aluminum Company of America about one and a quarter million letters a year. The Aluminum Company of America has built a fireproof building located at the City of New Kensington, Pennsylvania, which is about eighteen miles from Pittsburgh, Pennsylvania, for the storage of records and when the records of the company overcrowd the space available for their storage at the principal office of the company in Pittsburgh, Pennsylvania, they are transferred to New Kensington in this storage vault. The storage space occupied by the books and records of the company in its storage vault at New Kensington, Pennsylvania, aggregates about 13,900 feet. It is necessary for the company in the conduct of its business to refer constantly to its records at its principal office and in the City of New Kensington.

[fol. 267] 9. If the Aluminum Company of America is required to defend the New York suit in New York City, such defense will necessarily require constant reference to the books and records of Aluminum Company of America and the production of many of them at the trial. It will further require many of the officers and employees of the Aluminum Company of America to depart from its principal office in the City of Pittsburgh, Pennsylvania, where their duties are performed, to attend and assist at the trial in New York. By reason of these facts, the defense of said suit by Aluminum Company of America will be hampered

and interfered with and the business of Aluminum Company of America will be seriously injured by requiring the removal of its books and records from its principal office and the further necessity of having many of its officers and employees leave their duties at its principal office to attend upon or assist in the trial in New York, and it will be very difficult to make a prompt and thorough reference to the records of the said company in the defense of the New York suit and at the same time properly conduct the company's business.

[fol. 268] 10. The Aluminum Company of America, its officers, agents and representatives are threatened with irreparable injury as the result of the facts hereinbefore found.

11. The final hearing on the question whether an injunction should be granted to Aluminum Company of America as prayed for was held at Trenton, New Jersey, on Wednesday, June 23, 1937. At this hearing the following Government counsel were present in person, viz., Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, and John W. Aiken, Special Assistant to the Attorney General. Robert H. Jackson cross-examined the witnesses produced by Aluminum Company of America and he argued the case on behalf of Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Special Assistant to the Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney for the Southern District of New York.

Requested Conclusions of Law

1. The subject matter and issues in the suit pending in this court and raised by the petition of the United States in the New York suit are substantially the same. Every paragraph of the petition of the United States in the New York suit beginning with paragraph 40 and ending with paragraph 102 (paragraphs 1 to 39, both inclusive, and paragraph 103, being purely explanatory of the venue and descriptive of the parties, the industry or the relief sought)

[fol. 269] state situations which, if true, are forbidden by the aforementioned decree of this court.

2. The jurisdiction of this court over the subject matter and the parties aforementioned, having first attached and having been followed by its decree, is complete and exclusive, and such jurisdiction should be protected and preserved until the duty of this court has been fully performed.

[fol. 270] 3. Because of the action of the United States of America in filing its petition against the Aluminum Company of America in this court and the entry of the decree of this court pursuant to said petition and answer filed, which, as amended, is still in full force and effect, and applies both to present and future acts, the United States of America is without legal or equitable right further to proceed against the Aluminum Company of America and its wholly owned subsidiary companies and its present or former officers and directors acting in their official capacities, by bringing and maintaining the New York suit and thus subjecting them to the peril of two decrees existing at the same time in two separate and independent courts of the United States, affecting the same subject matter and issues.

4. The 100% subsidiaries of Aluminum Company of [fol. 271] America named in Finding of Fact No. 5 are agents and representatives of Aluminum Company of America and as such are bound by the terms of the aforementioned decree of this court; the officers and directors of Aluminum Company of America named in said finding are bound by the terms of said decree of this court and George G. Allen, while a director of Aluminum Company of America, and Andrew W. Mellon, while a director of said company, were bound by the terms of the said decree of this court.

5. If the United States of America is entitled to the relief prayed for in the New York suit, it can obtain the same upon proper application to this court, this court having full power to modify its decree heretofore entered, by force of principles inherent in the jurisdiction of the chancery, a continuing decree of injunction directed to events to come [fol. 272] being subject always to adaptation as events may shape the need.

6. The Aluminum Company of America is threatened with irreparable injury by the action of the United States in filing its petition in the New York suit.

[fol. 273] 7. This court is empowered and it is its duty to protect its jurisdiction by perpetually enjoining in their official capacities the officials of the United States of America who are prosecuting the New York suit against the Aluminum Company of America, to-wit, the said Homer S. Cummings, as Attorney General of the United States, the said Robert H. Jackson, as Assistant Attorney General of the United States, the said Wendell Berge, as Special Assistant to the Attorney General of the United States, the said Walter L. Rice, as Special Assistant to the Attorney General of the United States, the said John W. Aiken, as Special Assistant to the Attorney General of the United States, the said F. Gwyn Harper, Jr., as Special Attorney for the United States, the said N. A. Townsend, Jr., as Special Attorney for the United States, and the said Lamar Hardy, as United States Attorney in the Southern District of New York, or any person under their authority or control, from prosecuting or proceeding in the New York suit against the Aluminum Company of America, its 100% subsidiaries, or its officers and directors in their official capacities, and from bringing in any court other than this court any suit against Aluminum Company of America raising the same issues as those involved in the suit heretofore brought in this court by the United States and upon which this court has passed judgment by its decree of June 7, 1912.

8. Under the circumstances of this case this Court has jurisdiction over the Government counsel hereinafter mentioned and has power to enjoin them from prosecuting the suit against the Aluminum Company of America in the Southern District of New York. The Government counsel over whom this Court has such jurisdiction in this case are Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Special Assistant to the Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Spe-

cial Attorney, and Lamar Hardy, United States Attorney for the Southern District of New York.

[fol. 274] Respectfully submitted, William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Smith, Buchanan, Scott & Ingersoll, Solicitors for Aluminum Company of America.

[fol. 275] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AS TO RECORD

Now, to-wit, June 28, 1937, it being brought to the attention of the Court that certain original pleadings and orders of this Court in the above captioned case have been lost or mislaid, and pursuant to consent of counsel for the United States and the Aluminum Company of America, it is hereby ordered that copies of the following pleadings and decrees of this Court, appropriately identified by the signature of the Clerk of this Court, be and the same are hereby substituted for the lost or mislaid originals of said pleadings and decrees with the same force and effect as though they were said original pleadings and decrees, with the right reserved to either the United States or the Aluminum Company of America to call to the attention of this Court discrepancies, if any there be, between the copies hereby ordered substituted and the original pleadings and decrees, or any other pleadings, decrees, or original records of this Court which may be found to have been lost or mislaid, so that copies thereof may be made part of the record in the above captioned case:

1. Petition filed on May 16, 1912, by the United States of America instituting the above entitled proceeding in equity against Aluminum Company of America.

2. The answer of Aluminum Company of America filed in the above captioned proceeding on June 1, 1912.

3. A decree entered by this Court in the above captioned proceeding on June 7, 1912.

[fol. 276] 4. A petition of Aluminum Company of America filed October 25, 1922, seeking a modification of the aforementioned decree of this Court dated June 7, 1912.

5. A supplemental decree of this Court dated October 25, 1922, entered in accordance with the prayers of the Aluminum Company of America's said petition for modification.

(Sgd.) J. W. Thompson.

We consent to the entry of the foregoing order.
Robert H. Jackson, Assistant Attorney General of the United States. Smith, Buchanan, Scott & Ingersoll, Attorneys for the Aluminum Company of America.

[fol. 276½] IN UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA, Petitioner,

vs.

ALUMINUM COMPANY OF AMERICA, Defendant

Before Davis, Thompson and Biggs, Circuit Judges, Comprising Special Expediting Court

Opinion—Filed July 21, 1937

[fol.277] THOMPSON, Circuit J.:

FINDINGS OF FACT

1. Aluminum Company of America (hereinafter called Aluminum Company) is a Pennsylvania corporation and maintains its principal business offices in Pittsburgh, Pennsylvania, and other substantial business offices in New York City, New York. Aluminum Company and its wholly owned subsidiaries carry on business extensively in Pennsylvania, New York and other States, maintaining sales agencies in 20 different cities.

2. On May 16, 1912 the United States instituted a suit in equity (hereinafter called the 1912 suit) under the Sherman Antitrust Act (U. S. C. Title 15, Secs. 1, 2, 4) against Aluminum Company, by filing a petition in the District Court for the Western District of Pennsylvania seeking cancellation of four restrictive contracts and an agreement [fol. 278] with a Swiss aluminum company, and injunctive relief against certain unfair and discriminatory practices.

On June 1, 1912 Aluminum Company filed its answer to said petition. On June 7, 1912 the suit terminated with the entry of a consent decree cancelling the four restrictive contracts and the agreement with the Swiss aluminum company, and enjoining certain unfair and discriminatory practices. On October 25, 1922, upon consent of the Attorney General, Aluminum Company obtained a modification of said consent decree to permit the acquisition of interests in two Norwegian corporations.

3. On April 23, 1937, the United States of America, through Homer Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney (hereinafter called Government counsel), instituted an Antitrust suit in equity (hereinafter called the New York suit) in the District Court for the Southern District of New York, against Aluminum Company of America, and 62 other defendants, including 20 subsidiaries, 17 officers and directors, and George G. Allen and Andrew W. Mellon, former directors, of Aluminum Company. The 23 defendants in the New York suit who are not subsidiaries or present or former officers or directors of Aluminum Company include defendant Aluminium Limited, a Canadian corporation organized in 1928 by Aluminum Company for the alleged purpose of evading the Antitrust Laws and the consent decree entered June 7, 1912.

4. The petition in the New York suit alleges that Aluminum Company and its wholly owned subsidiaries have a [fol. 279] 100 per cent monopoly of virgin aluminum manufactured in the United States, a 90 per cent monopoly of aluminum sheet, a 95 per cent monopoly of aluminum alloys, and virtually a 100 per cent monopoly of extruded and structural shapes, wire, cable, bars, rods and tubing made from aluminum. It further alleges that by virtue of such monopolistic control, Aluminum Company has the power to fix arbitrary prices and exclude others who would engage in competition except for the great hazard necessarily involved in venturing into a business so completely monopolized by a single company, and that said monopolistic

power is in violation of Section 2 of the Sherman Act (U. S. C., Title 15, Sec. 2). The petition also alleges that defendants have suppressed potential competitors and prevented imports of competitive aluminum, and that Aluminum Company has used its monopolistic power to fix arbitrary, oppressive and unreasonable prices and to grant unfair and discriminatory advantages to its subsidiaries not available to independent customers. Although the petition sets forth the history of Aluminum Company from 1888 to 1937, most of the allegations relate to acts occurring after 1912.

5. The petition in the New York suit prays for a complete dissolution of Aluminum Company and the alleged monopoly, and asks that Aluminum Company's properties be rearranged under several separate and independent corporations, and that the court appoint such receivers and trustees as may be appropriate to effectuate the dissolution. The petition also prays that the stockholders common to Aluminum Company and Aluminium Limited be required to divest themselves of stockholdings in one or the other of said corporations in order to establish an effectual guarantee against further alleged suppression of competition between said two corporations. The petition [fol. 280] further asks for general injunctive relief against certain monopolistic, unfair and discriminatory practices described in the petition.

6. The subject matter, parties, issues and relief sought in the New York suit differ substantially from those in the 1912 suit.

7. The New York suit does not attack the affirmative injunctive provisions of the 1912 decree or seek to reverse any action taken by the District Court for the Western District of Pennsylvania in the suit in 1912.

8. The New York suit does not subject Aluminum Company to the peril of two conflicting decrees.

9. Aluminum Company will not suffer irreparable injury by being compelled to defend the suit in the Southern District of New York. Although the trial in New York may result in some inconvenience to Aluminum Company in being required to send records and officers from Pittsburgh

to New York, only a relatively small fraction of the books and records kept in Pittsburgh will be needed in New York to defend the suit there. Aluminum Company writes approximately 1,250,000 letters per year and has an accumulation of millions of letters and records in the Pittsburgh office and at its storage vault in New Kensington, Pennsylvania, 18 miles from Pittsburgh. Although some of these documents may be required in New York, Aluminum Company will not thereby be seriously hampered in the conduct of its business. Wholly owned subsidiaries of Aluminum Company with headquarters in New York make a practice of shipping their old records to the storage vault of Aluminum Company at New Kensington, Pennsylvania, and said subsidiaries are not seriously hampered in the conduct of their business by having such documents 400 miles away from their operating offices.

[fol. 281] 10. Aluminum Company and its subsidiaries have already retained New York counsel, who have filed 46 answers in the New York suit. The retention of New York counsel to undertake further defense of the New York suit will not constitute irreparable injury.

11. If United States were to seek further relief in the 1912 suit, there is no assurance that this Expedition Court which has been invoked by the Attorney General's certificate filed June 8, 1937, would sit in Pittsburgh, and it is therefore probable that Aluminum Company might suffer substantially the same inconvenience in defending such a proceeding in the 1912 suit as it will suffer in defending the suit in New York.

12. Many of the corporate and individual defendants reside, transact business, or may be found, in the Southern District of New York, and several of the principal officers of Aluminum Company reside in places other than Pittsburgh and vicinity. Aluminium Limited, one of the principal defendants in the New York suit, maintains its only American office in New York City. The Ocean Dominion Steamship Corporation, the St. Lawrence River Power Company and the Republic Mining and Manufacturing Company, defendants in the New York suit, are corporations organized and existing under the laws of New York or maintain their principal offices in New York City.

13. Since the entry of the consent decree June 7, 1912, the following corporations, named as defendants in the New York suit, have been organized:

Aluminum Manufacturers, Inc.
Aluminum Ore Company.
Aluminum Seal Company.
Alcoa Power Company, Ltd.
The Alton & Southern Railroad.
[fol. 282] Carolina Aluminum Company.
The Cedar Rapids Transmission Company.
The Louisiana Terminal Company.
The Massena Securities Corporation.
The Nantahala Power and Light Company.
The Ocean Dominion Steamship Corporation.
The Republic Mining and Manufacturing Company.
The St. Louis & Ohio River Railroad.
Surinaamache Bauxite Maatschappij.
The Coalesced Company.
The Aloxite Corporation.

14. On April 29, 1937, writs of subpœna were issued by the District Court for the Western District of Pennsylvania and within the next three days thereafter copies of said subpœna were served upon Government counsel, named as "parties defendant", in Washington, D. C., and in New York City. None of said Government counsel is or was an inhabitant of the Western District of Pennsylvania. On May 7, 1937, Robert H. Jackson, Assistant Attorney General, and Walter L. Rice, Special Assistant to the Attorney General, filed a special appearance in the District Court for the Western District of Pennsylvania for the purpose of moving to quash the service of subpœnas upon said Government counsel, set aside the returns, dismiss the petition filed by Aluminum Company April 29, 1937, and vacate the ex parte order issued April 29, 1937. Government counsel were expressly permitted to participate in the hearing on preliminary injunction before the said District Court without waiving their special appearance. United States District Judge Robert M. Gibson entered an order May 14, 1937, overruling the special appearance and granting an exception to the order. The rights under said special appearance have been preserved in the answer filed for [fol. 283] Government counsel June 3, 1937, in the Ex-

-pediting Certificate filed June 8, 1937, in the order creating the Expediting Court June 14, 1937, in the hearing before this Expedition Court in Trenton, New Jersey, June 23, 1937, and throughout these proceedings.

CONCLUSIONS OF LAW

1. The Expediting Act (U. S. C. Title 15, Sec. 28) and the Attorney General's certificate filed June 8, 1937 confer jurisdiction upon this Court to determine whether the District Judge properly made Government counsel "parties defendant" in the 1912 suit, whether said Government counsel were properly served with process outside the Western District of Pennsylvania, whether said district was the proper venue for said proceeding, and whether the suit filed by the United States in 1912 conferred jurisdiction upon the District Court for the Western District of Pennsylvania to enjoin Government counsel from proceeding in the suit filed in New York April 23, 1937.

2. The special appearance entered by Government counsel in this Court on May 6, 1937 has not been waived but has been maintained throughout the proceedings until the present date.

3. The Southern District of New York is a proper venue for the equity suit instituted by the United States of America against the Aluminum Company and 62 other defendants on April 23, 1937.

4. Under Section 12 of the Clayton Act (U. S. C., Title 15, Sec. 22) and Section 5 of the Sherman Act (U. S. C., Title 15, Sec. 5), the United States in filing an Antitrust suit has a choice of venue in any district where any one of the corporate defendants transacts business; and the selection of the New York venue cannot be defeated by the claim of one [fol. 284] or more of the defendants that it will be inconvenient to defend the suit in the district selected.

5. The subject matter, parties, issues and relief sought in the New York suit are substantially different from the subject matter, parties, issues and relief sought or granted in the 1912 suit.

6. The original petition and consent decree filed in the District Court for the Western District of Pennsylvania in

1912 do not operate so as to compel the United States to bring all subsequent related Antitrust suits against the Aluminum Company of America in that district.

7. Aluminum Company will not suffer irreparable injury by being compelled to defend the suit in the Southern District of New York.

8. Since the New York suit does not attack the affirmative injunctive provisions of the 1912 decree entered in the Western District of Pennsylvania, there is no occasion for that Court to issue an injunction to protect its jurisdiction acquired over the subject matter in 1912.

9. If the District Court for the Western District of Pennsylvania possesses the power to enjoin further proceedings in the Southern District of New York, this power should not be exercised under the circumstances of this case.

10. The petition filed by Aluminum Company of America, April 29, 1937 should be dismissed, the ex parte order issued April 29, 1937, making Homer Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney [fol. 285] General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney and Lamar Hardy, United States Attorney, "parties defendant" "in their capacities as attorneys and agents of the United States" should be vacated, the marshals' returns upon the writs of subpœna issued by the District Court for the Western District of Pennsylvania April 29, 1937 should be vacated and set aside, the order issued by said District Court May 14, 1937 enjoining said Government counsel pending final hearing from proceeding further in the New York case against thirty-nine of the sixty-three defendants therein should be vacated, and the petition for a permanent injunction against said Government counsel should be denied.

OPINION

This cause comes before us as an Expedition Court, composed in accordance with the provisions of section 1 of the Expedition Act (15 U. S. C. A. 28) and in response to a

certificate filed by the Attorney General that the cause is a suit in equity in which the United States is complainant, which has become of general public importance. The following facts led up to the formation of the Court:

On April 23, 1937 the Attorney General on behalf of the United States filed suit in the District Court for the Southern District of New York under the Sherman Antitrust Act (15 U. S. C. A. 1, 2, 4) against Aluminum Company of America and sixty-two other defendants, charging monopoly and conspiracies to restrain and monopolize trade and commerce in aluminum and related commodities. A copy of the petition is set out in full in the appendix to this opinion. On April 29, 1937, Aluminum Company of America filed a petition in the District Court for the Western [fol. 286] District of Pennsylvania in an old suit entitled "United States of America, Petitioner v. Aluminum Company of America, Defendant," alleging that the subject matter and issues adjudicated in this old Pennylvania suit were identical with the subject matter and issues in the New York suit. The Pennsylvania suit had terminated in a consent decree filed June 7, 1912. By order dated April 29, 1937 United States District Judge Gibson made the Attorney General and seven other members of the Department of Justice parties defendants in the old Pennsylvania suit, restrained them from proceeding in the New York suit and ordered them to show cause why a preliminary injunction should not issue. On May 6, 1937 government counsel entered a special appearance in the District Court for the Western District of Pennsylvania, and moved to quash service, to set aside the Marshal's returns, to dismiss Aluminum Company of America's petition and to vacate the restraining order. On May 14, 1937 Judge Gibson issued a preliminary injunction restraining the Attorney General and his assistants from preceeding with the New York suit. On June 8, 1937 the Attorney General filed an expediting certificate in the District Court for the Western District of Pennsylvania and on June 14, 1937 this Expedition Court was formed, subject to the right of the defendants to object to the jurisdiction of the Court. On June 17, 1937 answers to the suit in the District Court for the Southern District of New York were filed by the defendants in that suit. We set out in the appendix the most comprehensive of these answers, that of the Aluminum Company of America.

This Court was formed and its jurisdiction properly invoked in conformity with section 1 of the Expediting Act which provides:

"In any suit in equity brought in any district court of the United States under sections 1 to 7, inclusive, or sec- [fol. 287] tion 15 of this chapter or any other statutory provisions having a like purpose enacted after February 11, 1903, or that may be enacted wherein the United States is complainant, the Attorney General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select; or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges sitting in such case shall be equally divided in opinion as to the decision or disposition of said cause, or in the event that a majority of said judges shall be unable to agree upon the judgment, order, or decree finally disposing of said case in said court which should be entered in said cause, then they shall immediately certify that fact to the Chief Justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the Chief Justice shall be immediately transmitted to the clerk of the district court in which said cause is pending, and shall be entered upon the minutes of said court. Thereupon said cause shall at once be set down for reargument and the parties thereto notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof."

[fol. 288] We could make a preliminary determination as to whether service of process upon government counsel outside the Western District of Pennsylvania is void, but deem it of paramount importance to determine the controversy upon its merits rather than upon questions of practice and procedure.

The real question before this court is whether the United States has the right under the facts of this case to proceed in the District Court for the Southern District of New York by an original bill rather than by a supplemental bill in the 1912 suit in the District Court for the Western District of Pennsylvania. We emphasize the negative proposition that this Court is not called upon to rule whether a monopoly exists, whether there is a conspiracy in restraint of trade or whether the corporate structure of Aluminum Company of America should be revised.

It may be stated as a general proposition that if the subject matter is identical a Federal Court first acquiring jurisdiction over the subject matter may enjoin a second suit in another court in which it is sought to defeat the first court's jurisdiction. Steelman v. All Continent Corporation, 57 S. Ct. 705, opinion filed April 26, 1937.

Are the issues, the parties, the subject matter and the relief sought in the 1937 New York suit substantially identical with those of the 1912 Pennsylvania suit? We think not. The Pennsylvania suit was against one defendant, the Aluminum Company of America; the New York suit is against Aluminum Company of America and sixty-two additional defendants. Even if wholly owned subsidiaries, officers and directors of Aluminum Company of America are considered as being included in the Pennsylvania suit because of their relationship to the sole defendant in that case, the record discloses that twenty-three of the defend- [fol. 289] ants in the New York suit were neither subsidiaries, officers nor directors of the Aluminum Company of America. In fact some of the corporate defendants in the New York suit were not in existence in 1912.

Turning from a comparison of parties defendants to that of issues, we find only such similarity as may exist between an infant and a full grown man. The acts complained of may be similar in character but are different in fact. In the Pennsylvania action the United States based its anti-

trust suit against the Aluminum Company of America upon alleged monopolistic and restrictive practices. The United States expressly conceded that the monopoly enjoyed by Aluminum Company at the time of suit was lawful because of its ownership of unexpired basic patents, but complained of the unlawful means employed to perpetuate the monopoly as evidenced by contracts with the Swiss Aluminum Company, the General Chemical Company, the Norton Company, the Pennsylvania Salt Company and an agreement with Kruttschmidt Coleman. In the New York action the United States based its antitrust suit upon an alleged unlawful monopoly and set forth, in detail, devices used by the defendants designed to curtail imports of aluminum and related commodities by American firms, and exports to the United States by foreign producers. Twelve paragraphs of the New York petition are devoted to fact allegations meant to and tending to demonstrate that Aluminum Company of America has a ninety to one hundred per cent monopoly of various aluminum and related commodities and thereby has the power to fix arbitrary and unreasonable prices. This is alleged to be in violation of the Sherman Antitrust Act regardless of the devices used to perpetuate the monopoly.

When we examine the respective petitions, it becomes obvious that whereas the United States, in the Pennsylvania [fol. 290] suit, treated the existence of a monopoly as wholly lawful but complained of the devices used to maintain the monopoly after the expiration of patents owned by the defendant, by the time it brought the New York suit the issue had become not whether any specific device was lawful but whether the monopoly which existed in 1937 was lawful.

The most powerful argument to sustain the contention that the suits are not identical can be found in the nature of the relief sought. The New York petition prays that the Aluminum Company of America be dissolved; that its properties be rearranged under several separate and independent corporations; that receivers be appointed; and that the stockholders of Aluminum Company of America and of Aluminum Limited divest themselves of their stock in one or the other of these corporations. This is in strong contrast to the 1912 Pennsylvania petition in which the United States sought merely to eliminate certain practices

of the Aluminum Company of America which the United States deemed objectionable under the Sherman Anti-trust Act.

Our conclusion is that the two suits are not so similar as to parties defendants, subject matter, issues or relief sought as to entitle the defendants to injunctive relief.

We are not impressed with the argument that it would be inconvenient for Aluminum Company of America to defend the suit in New York. If the fact that it may be necessary for a defendant to retain counsel and prepare a defense amounts to irreparable harm, such as to justify relief by injunction, then an injunction would be available to any defendant in any suit. Moreover, no matter in what jurisdiction the suit is tried a certain burden of inconvenience will of necessity be borne by the parties litigant. We think this phase of the argument is mere makeweight.

[fols. 291-414] In view of our decision on the merits of the controversy, we deem it unnecessary to determine whether the Western District of Pennsylvania or the Southern District of New York is the proper venue for all anti-trust actions involving the Aluminum Company of America as one of the parties litigant.

The petition of Aluminum Company of America is dismissed, service of process upon government counsel is quashed, the ex parte order of April 29, 1937 and the preliminary injunction of May 14, 1937 are vacated and the injunctive relief prayed for is denied.

A true Copy. Teste:

——— ———, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 415] In United States District Court for the Western District of Pennsylvania, November Term, 1912

In Equity. No. 159

United States of America, Petitioner,

v.

Aluminum Company of America, Defendant

Before Circuit Judges Davis, Thompson and Biggs, Comprising Expedition Court

Final Decree

This Expedition Court, created pursuant to Section 1 of the Expediting Act (U. S. C., Title 15, Sec. 28), having heard testimony at the final hearing in Trenton, New Jersey, June 23, 1937, on the issues raised by the petition filed by Aluminum Company of America April 29, 1937, and having considered argument of counsel, briefs, and proposed findings of fact and conclusions of law; now therefore

Upon motion of Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, and John W. Aiken, Special Assistant to the Attorney General, it is hereby

Ordered, Adjudged and Decreed that the petition filed by Aluminum Company of America on April 29, 1937 is dismissed; that the ex parte order of April 29, 1937 making eight members of the Department of Justice "parties defendant" is vacated; that the preliminary injunction of May 14, 1937 is vacated; and that the injunctive relief prayed for by Aluminum Company of America is denied.

Philadelphia, Pennsylvania, July 27, 1937.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge.

[fol. 416] An exception to the entry of the foregoing final decree is granted to Aluminum Company of America, and bill sealed.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge.

[fol. 417] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING EXCEPTION

And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with respect to each finding of fact and conclusion of law made by this Court on July 21, 1937, with respect to the failure of the Court to affirm each request for findings of fact and conclusions of law presented by counsel for said company, with respect to the failure of the Court to sustain each of the three objections filed by said company on June 23, 1937, and with respect to the order concluding this Court's Opinion of July 21, 1937, in which the petition of Aluminum Company of America is dismissed, service of process upon Government counsel is quashed, the ex parte order of April 29, 1937, and the preliminary injunction of May 14, 1937, are vacated, and the injunctive relief prayed for is denied.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge.

[fol. 418] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL

To the Honorable J. Warren Davis, J. Whitaker Thompson, and John Biggs, Jr., Circuit Judges, sitting as Judges of the District Court of the United States for the Western District of Pennsylvania, upon a statutory Expediting Court:

Aluminum Company of America, your petitioner, who is the defendant in the above entitled cause, prays that it may be permitted to take an appeal from the final decree entered in the above entitled cause on the 27th day of July, 1937, to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith. The statutory authority for such an appeal is contained in the Expediting Act of 1903, as amended, 15 U. S. C. A. §

29; and in Section 238 of the Judicial Code, as amended, 28 U. S. C. A. § 345.

And your petitioner prays that, upon its giving bond in an amount to be fixed by this Court, the said appeal may operate as a supersedeas and may suspend, during the pendency of said appeal, this Court's decree of July 27th, 1937; and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated July 27, 1937.

William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Smith, Buchanan, Scott & Ingersoll, Solicitors for Aluminum Company of America.

[fol. 419] ORDER ALLOWING APPEAL

And now, July 27, 1937, on motion of Leon E. Hickman, solicitor for Aluminum Company of America, and upon consideration of the petition of said company for the allowance of an appeal, an appeal to the Supreme Court of the United States is hereby allowed upon the filing of a bond as required by law, in the sum of $250. It is further ordered that a copy of the transcript of the record, proceedings and papers in this cause, duly authenticated, be duly filed with the Clerk of the Supreme Court of the United States.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge.

[fol. 420] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

And now, this 27th day of July, 1937, Aluminum Company of America, defendant and petitioner in the above entitled case, complains that in the record and proceedings in such case, and in the final decree this day entered therein, manifest error has occurred to the prejudice of the said defendant, more particularly specified in the following assignment of errors, upon which the said defendant relies

to sustain the appeal prayed for to the Supreme Court of the United States:

1. The Court erred in entering its final decree of July 27, 1937, said decree being as follows:

"This Expedition Court, created pursuant to Section 1 of the Expediting Act (U. S. C., Title 15, Sec. 28), having heard testimony at the final hearing in Trenton, New Jersey, June 23, 1937, on the issues raised by the petition filed by Aluminum Company of America April 29, 1937, and having considered argument of counsel, briefs, and proposed findings of fact and conclusions of law; now therefore

Upon motion of Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, and John W. Aiken, Special Assistant to the Attorney General, it is hereby

Ordered, Adjudged and Decreed that the petition filed by Aluminum Company of America on April 29, 1937 is dismissed; that the ex parte order of April 29, 1937 making [fol. 421] eight members of the Department of Justice 'parties defendant' is vacated; that the preliminary injunction of May 14, 1937, is vacated; and that the injunctive relief prayed for by Aluminum Company of America is denied.

Philadelphia, Pennsylvania, July 27, 1937.

J. Warren Davis, United States Circuit Judge; J. Whitaker Thompson, United States Circuit Judge; John Biggs, Jr., United States Circuit Judge."

to which decree the defendant, Aluminum Company of America, was noted the following exception:

"An exception to the entry of the foregoing final decree is granted to Aluminum Company of America, and bill sealed.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

2. The Court erred in entering the following portion of its final decree of July 27, 1937:

"Ordered, Adjudged and Decreed that the petition filed by Aluminum Company of America on April 29, 1937, is

dismissed * * * and that the injunctive relief prayed for by Aluminum Company of America is denied.

Philadelphia, Pennsylvania, July 27, 1937.

J. Warren Davis, United States Circuit Judge; J. Whitaker Thompson, United States Circuit Judge; John Biggs, Jr., United States Circuit Judge,"

to which decree the defendant, Aluminum Company of America, was noted the following exception:

"An exception to the entry of the foregoing final decree is granted to Aluminum Company of America, and bill [fol. 422] sealed.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

3. The Court erred in entering the following portion of its final decree of July 27, 1937:

"Ordered, Adjudged and Decreed * * * that the ex parte order of April 29, 1937 making eight members of the Department of Justice 'parties defendant' is vacated; * * *

Philadelphia, Pennsylvania, July 27, 1937.

J. Warren Davis, United States Circuit Judge; J. Whitaker Thompson, United States Circuit Judge; John Biggs, Jr., United States Circuit Judge."

to which decree the defendant, Aluminum Company of America, was noted the following exceptions:

"An exception to the entry of the foregoing final decree is granted to Aluminum Company of America, and bill sealed.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

4. The Court erred in entering the following portion of its final decree of July 27, 1937:

"Ordered, Adjudged and Decreed * * * that the preliminary injunction of May 14, 1937, is vacated; * * *

Philadelphia, Pennsylvania, July 27, 1937.

J. Warren Davis, United States Circuit Judge; J. Whitaker Thompson, United States Circuit Judge; John Biggs, Jr., United States Circuit Judge,"

[fol. 423] to which decree the defendant, Aluminum Company of America, was noted the following exception:

"An exception to the entry of the foregoing final decree is granted to Aluminum Company of America, and bill sealed.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

5. The Court erred in entering the following portion of the order with which it concluded its Opinion of July 21, 1937:

"* * * service of process upon government counsel is quashed; * * *",

to which order the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, * * * with respect to the order concluding this Court's Opinion of July 21, 1937, in which * * * service of process upon Government counsel is quashed, * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

6. The Court erred in its findings of fact filed July 21, 1937, by making its sixth finding of fact, which is as follows:

"6. The subject matter, parties, issues and relief sought in the New York suit differ substantially from those in the 1912 suit,"

[fol. 424] to which finding of fact the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with respect to each finding of fact and conclusion of law made by this Court on July 21, 1937 * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

7. The Court erred in its findings of fact filed July 21, 1937, by making its eighth finding of fact, which is as follows:

"8. The New York suit does not subject Aluminum Company to the peril of two conflicting decrees,"

to which finding of fact the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with respect to each finding of fact and conclusion of law made by this Court on July 21, 1937 * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge,"

8. The Court erred in its findings of fact filed July 21, 1937, by making the following portion of its ninth finding of fact:

"9. Aluminum Company will not suffer irreparable injury by being compelled to defend the suit in the Southern District of New York. * * *,"

[fol. 425] to which finding of fact the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with respect to each finding of fact and conclusion of law made by this Court on July 21, 1937 * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

9. The Court erred in its findings of fact filed July 21, 1937, by making the following portion of its fourteenth finding of fact:

"14. * * * Government counsel were expressly permitted to participate in the hearing on preliminary injunction before the said District Court without waiving their special appearance. United States District Judge Robert M. Gibson entered an order May 14, 1937, overruling the special appearance and granting an exception to the order.

The rights under said special appearance have been preserved in the answer filed for Government counsel June 3, 1937, in the Expediting Certificate filed June 8, 1937, in the order creating the Expediting Court June 14, 1937, in the hearing before this Expedition Court in Trenton, New Jersey, June 23, 1937, and throughout these proceedings,''

to which finding of fact the defendant, Aluminum Company of America, was noted the following exception:

''And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with respect to each finding of fact and conclusion of law made by this Court on July 21, 1937 * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge.''

[fol. 426] 10. The Court erred in its conclusions of law filed July 21, 1937, by making its first conclusion of law, which is as follows:

''1. The Expediting Act (U. S. C. Title 15, Sec. 28) and the Attorney General's certificate filed June 8, 1937 confer jurisdiction upon this Court to determine whether the District Judge properly made Government counsel 'parties defendant' in the 1912 suit, whether said Government counsel were properly served with process outside the Western District of Pennsylvania, whether said district was the proper venue for said proceeding, and whether the suit filed by the United States in 1912 conferred jurisdiction upon the District Court for the Western District of Pennsylvania to enjoin Government counsel from proceeding in the suit filed in New York April 23, 1937,''

to which conclusion of law the defendant, Aluminum Company of America, was noted the following exception:

''And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with respect to each finding of fact and conclusion of law made by this Court on July 21, 1937 * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge.''

11. The Court erred in its conclusions of law filed July 21, 1937, by making its second conclusion of law, which is as follows:

"2. The special appearance entered by Government counsel in this Court on May 6, 1937 has not been waived but has been maintained throughout the proceedings until the present date,"

to which conclusion of law the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with [fol. 427] respect to each finding of fact and conclusion of law made by this Court on July 21, 1937 * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

12. The Court erred in its conclusions of law filed July 21, 1937, by making its third conclusion of law, which is as follows:

"3. The Southern District of New York is a proper venue for the equity suit instituted by the United States of America against the Aluminum Company and 62 other defendants on April 23, 1937,"

to which conclusion of law the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with respect to each finding of fact and conclusion of law made by this Court on July 21, 1937 * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

13. The Court erred in its conclusions of law filed July 21, 1937, by making its fifth conclusion of law, which is as follows:

"5. The subject matter, parties, issues and relief sought in the New York suit are substantially different from the

subject matter, parties, issues and relief sought or granted in the 1912 suit,''

to which conclusion of law the defendant, Aluminum Company of America, was noted the following exception:

''And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with respect to each finding of fact and conclusion of law made [fol. 428] by this Court on July 21, 1937 * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge.''

14. The Court erred in its conclusions of law filed July 21, 1937, by making its seventh conclusion of law, which is as follows:

''7. Aluminum Company will not suffer irreparable injury by being compelled to defend the suit in the Southern District of New York,''

to which conclusion of law the defendant, Aluminum Company of America, was noted the following exception:

''And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with respect to each finding of fact and conclusion of law made by this Court on July 21, 1937 * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge.''

15. The Court erred in its conclusions of law filed July 21, 1937, by making its eighth conclusion of law, which is as follows:

''8. Since the New York suit does not attack the affirmative injunctive provisions of the 1912 decree entered in the Western District of Pennsylvania, there is no occasion for that Court to issue an injunction to protect its jurisdiction acquired over the subject matter in 1912,''

to which conclusion of law the defendant, Aluminum Company of America, was noted the following exception:

''And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with

respect to each finding of fact and conclusion of law made [fol. 429] by this Court on July 21, 1937 * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

16. The Court erred in its conclusions of law filed July 21, 1937, by making its ninth conclusion of law, which is as follows:

"9. If the District Court for the Western District of Pennsylvania possesses the power to enjoin further proceedings in the Southern District of New York, this power should not be exercised under the circumstances of this case,"

to which conclusion of law the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with respect to each finding of fact and conclusion of law made by this Court on July 21, 1937 * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

17. The Court erred in its conclusions of law filed July 21, 1937, by making its tenth conclusion of law, which is as follows:

"10. The petition filed by Aluminum Company of America, April 29, 1937 should be dismissed, the ex parte order issued April 29, 1937, making Homer Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney, 'parties defendant' 'in their capacities as attorneys and agents of the United States' should be va- [fol. 430] cated, the marshals' returns upon the writs of subpoena issued by the District Court for the Western District of Pennsylvania April 29, 1937 should be vacated and set aside, the order issued by said District Court May 14, 1937 enjoining said Government counsel pending final hear-

ing from proceeding further in the New York case against thirty-nine of the sixty-three defendants therein should be vacated, and the petition for a permanent injunction against said Government counsel should be denied,"

to which conclusion of law the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, with respect to each finding of fact and conclusion of law made by this Court on July 21, 1937 . . .

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

18. The Court erred in failing to make the following finding of fact requested by counsel for Aluminum Company of America:

"5. The decree of this court, hereinbefore mentioned in (requested) finding of fact No. 2 (referring to 1912 decree), is binding upon both the United States of America and the Aluminum Company of America, and by its terms it is binding also upon all the officers, agents and representatives of the Aluminum Company of America. The following 100 per cent subsidiaries of Aluminum Company of America were named as defendants in the New York suit, to wit, the Aluminum Cooking Utensil Company, Aluminum Ore Company, Aluminum Seal Company, Alcoa Power Company, Limited, Alton and Southern Railroad, Bauxite and Northern Railway Company, Carolina Aluminum Company, Cedar Rapids Transmission Company, Limited, Knoxville Power Company, Louisiana Terminal Company, Massena Securities Corporation, The Massena Terminal Railroad Company, Nantahala Power and Light Company, Ocean Dominion Steamship Corporation, The Republic Mining and Manufacturing Company, The St. Lawrence River Power Company, St. Louis and Ohio River Railroad, Surinaamsche Bauxite Maatschappij and the United States Aluminum Company and are agents and representatives [fol. 431] of the Aluminum Company of America. Franklin Fluorspar Company, named as a defendant in the New York suit, was dissolved in 1935 and its assets distributed to Aluminum Ore Company, the owner of all of its capital

stock. The capital stock of the Aluminum Ore Company was at that time and is still owned in its entirety by the Aluminum Company of America. The following individual persons named as defendants in the New York suit are officers or directors of the Aluminum Company of America, to-wit, Arthur V. Davis, Roy A. Hunt, Edwin S. Fickes, George R. Gibbons, Robert E. Withers, C. B. Fox, Safford K. Colby, Winthrop C. Neilson, George J. Stanley, Irving W. Wilson, David K. E. Bruce, George H. Clapp, Richard K. Mellon, Paul J. Urquhart, J. R. D. Huston, C. L. Lycette, and J. J. Demskie. The aforementioned individuals hold the following positions as officers and directors of the Aluminum Company of America: Arthur V. Davis, Director and Chairman of the Board; Roy A. Hunt, Director and President; Edwin S. Fickes, Director and Senior Vice President in Charge of engineering; George R. Gibbons, Director, Senior Vice President, secretary, in charge of sales, advertising and promotional work; Robert E. Withers, Director and Senior Vice President in charge of finance, and Treasurer; C. B. Fox, Vice President in charge of alumina operations; Safford K. Colby, Vice President in charge of advertising and promotional work; Winthrop C. Neilson, Vice President in charge of bauxite operations; George J. Stanley, Vice President in charge of sales; Irving W. Wilson, Vice President in charge of production and fabrication; David K. E. Bruce, Director; George H. Clapp, Director; Richard K. Mellon, Director; Paul J. Urquhart, Vice President in charge of accounting; J. R. D. Huston, Assistant Secretary and Assistant Treasurer; C. L. Lycette, Assistant Secretary; J. J. Demskie, Assistant Treasurer. George G. Allen, named as a defendant in the New York suit, until 1936 was a director of Aluminum Company of America. Andrew W. Mellon, named as a defendant in the New York suit, was a director of Aluminum Company of America at the time of the entry of the aforementioned decree of this court and thereafter until 1921. Alvah K. Lawrie, named as a defendant in the New York suit, was formerly a director of the Aluminum Company of America and died in December, 1936,"

to which failure to find the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, * * *

with respect to the failure of the Court to affirm each request for findings of fact and conclusions of law presented by counsel for said company • • •.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

[fol. 432] 19. The Court erred in failing to make the following conclusion of law requested by counsel for Aluminum Company of America:

"1. The subject matter and issues in the suit pending in this court and raised by the petition of the United States in the New York suit are substantially the same. Every paragraph of the petition of the United States in the New York suit beginning with paragraph 40 and ending with paragraph 102 (paragraphs 1 to 39, both inclusive, and paragraph 103, being purely explanatory of the venue and descriptive of the parties, the industry or the relief sought) state situations which, if true, are forbidden by the aforementioned decree of this court,"

to which failure to conclude the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, • • • with respect to the failure of the Court to affirm each request for findings of fact and conclusions of law presented by counsel for said company • • •.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

20. The Court erred in failing to make the following conclusion of law requested by counsel for Aluminum Company of America:

"2. The jurisdiction of this court over the subject matter and the parties aforementioned, having first attached and having been followed by its decree, is complete and exclusive, and such jurisdiction should be protected and preserved until the duty of this court has been fully performed,"

to which failure to conclude the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, * * * with respect to the failure of the Court to affirm each request for findings of fact and conclusions of law pre-
[fol. 433] sented by counsel for said company * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

21. The Court erred in failing to make the following conclusion of law requested by counsel for Aluminum Company of America:

"3. Because of the action of the United States of America in filing its petition against the Aluminum Company of America in this court and the entry of the decree of this court pursuant to said petition and answer filed, which, as amended, is still in full force and effect, and applies both to present and future acts, the United States of America is without legal or equitable right further to proceed against the Aluminum Company of America and its wholly owned subsidiary companies and its present or former officers and directors acting in their official capacities, by bringing and maintaining the New York suit and thus subjecting them to the peril of two decrees existing at the same time in two separate and independent courts of the United States, affecting the same subject matter and issues,"

to which failure to conclude the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, * * * with respect to the failure of the Court to affirm each request for findings of fact and conclusions of law presented by counsel for said company * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

22. The Court erred in failing to make the following conclusion of law requested by counsel for Aluminum Company of America:

"4. The 100% subsidiaries of Aluminum Company of America named in (requested) Finding of Fact No. 5 [fol. 434] (quoted in Assignment No. 18) are agents and representatives of Aluminum Company of America and as such are bound by the terms of the aforementioned decree of this court; the officers and directors of Aluminum Company of America named in said finding are bound by the terms of said decree of this court and George G. Allen, while a director of Aluminum Company of America, and Andrew W. Mellon, while a director of said company, were bound by the terms of the said decree of this court,"

to which failure to conclude the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, • • • with respect to the failure of the Court to affirm each request for findings of fact and conclusions of law presented by counsel for said company • • •.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

23. The Court erred in failing to make the following conclusion of law requested by counsel for Aluminum Company of America:

"5. If the United States of America is entitled to the relief prayed for in the New York suit, it can obtain the same upon proper application to this court, this court having full power to modify its decree, heretofore entered, by force of principles inherent in the jurisdiction of the chancery, a continuing decree of injunction directed to events to come being subject always to adaptation as events may shape the need,"

to which failure to conclude the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, • • •

with respect to the failure of the Court to affirm each request for findings of fact and conclusions of law presented by counsel for said company * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

[fol. 435] 24. The Court erred in failing to make the following conclusion of law requested by counsel for Aluminum Company of America:

"7. This court is empowered and it is its duty to protect its jurisdiction by perpetually enjoining in their official capacities the officials of the United States of America who are prosecuting the New York suit against the Aluminum Company of America, to-wit, the said Homer S. Cummings, as Attorney General of the United States, the said Robert H. Jackson, as Assistant Attorney General of the United States, the said Wendell Berge, as Special Assistant to the Attorney General of the United States; the said Walter L. Rice, as Special Assistant to the Attorney General of the United States, the said John W. Aiken, as Special Assistant to the Attorney General of the United States, the said E. Gwyn Harper, Jr., as Special Attorney for the United States, the said N. A. Townsend, Jr., as Special Attorney for the United States, and the said Lamar Hardy, as United States Attorney in the Southern District of New York, or any person under their authority or control, from prosecuting or proceeding in the New York suit against the Aluminum Company of America, its 100% subsidiaries, or its officers and directors in their official capacities, and from bringing in any court other than this court any suit against Aluminum Company of America raising the same issues as those involved in the suit heretofore brought in this court by the United States and upon which this court has passed judgment by its decree of June 7, 1912,"

to which failure to conclude the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, * * * with respect to the failure of the Court to affirm each re-

quest for findings of fact and conclusions of law presented by counsel for said company * * *.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

25. The Court erred in failing to sustain the following objection made by counsel for Aluminum Company of America:

"1. Aluminum Company of America objects to the creation of a special expediting court at this time in this case for the following reasons: The expediting certificate of the [fol. 435½] Attorney General executed under date of June 7, 1937, and filed in the District Court of the United States for the Western District of Pennsylvania on June 8, 1937, closes with the following reservation:

'In filing this certificate I expressly reserve all rights of exception to the *ex parte* order of this Court entered April 29, 1937, making said Government counsel "parties defendant", and to the order entered May 14, 1937 overruling the special appearance filed for said Government counsel and denying their motion to vacate service of process upon them.'

The special appearance above mentioned was entered on the ground that this Court has no jurisdiction over the Attorney General and other law officers of the United States whose names are mentioned in the special appearance and that the Western District of Pennsylvania is not the proper venue. The motion to quash service was made on the ground that this Court has no jurisdiction over the said Attorney General and other law officers of the United States for the reason that none of them are citizens or inhabitants of or residents of or found within said Western District of Pennsylvania.

On June 14, 1937, Walter L. Rice, Special Assistant to the Attorney General, in presenting to the Judges of the United States Circuit Court of Appeals for the Third Circuit, the oral motion of the Attorney General for the appointment of a special expediting court stated to the Judges that Government counsel wished to still preserve their spe-

cial appearance entered in the United States District Court for the Western District of Pennsylvania.

By the above mentioned reservation in the expediting certificate and by the above mentioned statement of Walter L. Rice the Attorney General and said other law officers of the United States are maintaining the position that this Court has no jurisdiction over them. In the order creating the special expediting court one of the issues assigned for hearing is the issue of fact and law raised 'by the order of May 14, 1937, denying the motion of Government counsel to quash service' * * * *

The Attorney General and said other law officers of the United States are thus improperly maintaining that they have the right to have a special expediting court created and to proceed therein and to participate in the final hearing, on the merits, upon the question whether a final decree of injunction is to be entered upon the application of Aluminum Company of America therefor, and that, at the same time, they have the right to insist that the expediting court has no jurisdiction over them. If on said final hearing the injunction sought by Aluminum Company of America is denied, the Attorney General and said other law officers of the United States propose immediately to leave the Third Circuit, leaving the expediting court without any case to try, and to proceed into the Second Circuit and there try a case involving the same subject matter and [fol. 436] issues against the Aluminum Company of America and others. The decree entered June 7, 1912, in the above entitled case granted to the United States of America all the relief the latter was entitled to on the record as it stood then. There has been no change in the record in this respect. The United States of America has made no application to this Court to modify or extend the decree of June 7, 1912, nor has the United States of America taken any proceeding in this Court for additional relief.

Aluminum Company of America will immediately withdraw this objection if the Attorney General and said other law officers of the United States, by withdrawing their special appearance or otherwise, will concede that they are amenable to the decrees of this Court, it being understood that this concession does not constitute any waiver of the position of the attorney General and said other law officers that, by reason of their official positions, they are cloaked

with immunity from suit and that the United States of America is likewise immune from suit,"

to the failure to sustain which objection the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, * * * with respect to the failure of the Court to sustain each of the three objections filed by said company on June 23, 1937.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

26. The Court erred in failing to sustain the following objection made by counsel for Aluminum Company of America:

"2. For the reasons set forth in objection No. 1 Aluminum Company of America objects to the order entered in this case on June 14, 1937, creating the special expediting court and moves that the said order be vacated.

Aluminum Company of America will immediately withdraw this objection if the Attorney General and said other law officers of the United States, by withdrawing their special appearance or otherwise, will concede that they are amenable to the decrees of this Court, it being understood that this concession does not constitute any waiver of the position of the Attorney General and said other law officers that, by reason of their official positions, they are cloaked [fol. 437] with immunity from suit and that the United States of America is likewise immune from suit,"

to the failure to sustain which objection the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, * * * with respect to the failure of the Court to sustain each of the three objections filed by said company on June 23, 1937.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

27. The Court erred in failing to sustain the following objection made by counsel for Aluminum Company of America:

"3. For the reasons set forth in objection No. 1 Aluminum Company of America objects to the Attorney General and other law officers of the United States being permitted to proceed and participate in the final hearing in this Court on the question whether Aluminum Company of America is entitled to an injunction.

Aluminum Company of America will immediately withdraw this objection if the Attorney General and said other law officers of the United States, by withdrawing their special appearance or otherwise, will concede that they are amenable to the decrees of this Court, it being understood that this concession does not constitute any waiver of the position of the Attorney General and said other law officers that, by reason of their official positions, they are cloaked with immunity from suit and that the United States of America is likewise immune from suit.

If the Court shall overrule any of the foregoing objections, Aluminum Company of America respectfully requests that an exception to such action be noted and allowed to it,"

to the failure to sustain which objection the defendant, Aluminum Company of America, was noted the following exception:

"And now, July 27, 1937, an exception is hereby granted to Aluminum Company of America, and bill sealed, * * * with respect to the failure of the Court to sustain each of the [fols. 438-441] three objections filed by said company on June 23, 1937.

J. Warren Davis, United States Circuit Judge. J. Whitaker Thompson, United States Circuit Judge. John Biggs, Jr., United States Circuit Judge."

Wherefore defendant, Aluminum Company of America, prays that the aforementioned decree of July 27, 1937, may be reversed, and for such other and further relief as to the Court may seem just and proper.

William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Solicitors for Aluminum Company of America.

[fols. 442-443] Bond on appeal for $250.00, approved July 27, 1937, omitted in printing.

[fols. 444-445] Citation, in usual form, showing service on Walter L. Rice, omitted in printing.

[fol. 446] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF LODGMENT OF STATEMENT OF EVIDENCE AND FIXING TIME FOR APPROVAL PURSUANT TO EQUITY RULE 75

To the United States of America, Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney, and their solicitors:

You and each of you will please take notice that Aluminum Company of America, the above named defendant, has prepared a statement of evidence under Equity Rule 75 (b) for use in connection with its appeal from the final decree of court entered in the above entitled cause on July 27, 1937, which statement of evidence was this day lodged in the office of the Clerk of the above entitled Court for your examination.

Please take notice that the said defendant will ask the above mentioned Court or a judge thereof to approve such statement of evidence on August 6, 1937, at 9:00 o'clock a. m. Eastern Standard Time, or as soon thereafter as counsel can be heard, at the Court Room of the United States Circuit Court of Appeals for the Third Circuit in the Post Office Building of the City of Philadelphia, Commonwealth of Pennsylvania.

Dated July 27, 1937.

William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Solicitors for Aluminum Company of America, Defendant and Appellant.

[fol. 447] Receipt of a copy of a statement of evidence prepared under Equity Rule 75 for use in connection with this appeal from the final decree of court dated July 27, 1937, and also of notice fixing the time and place for the approval of the same is hereby acknowledged this 27th day of July, 1937, on behalf of each of the above named appellees.

Walter L. Rice, Special Assistant to the Attorney General.

[fol. 448] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA, NOVEMBER TERM, 1912

In Equity. No. 159

UNITED STATES OF AMERICA

v.

ALUMINUM COMPANY OF AMERICA

Statement of Evidence Required Under Equity Rule 75

STATEMENT OF PROCEEDINGS

This action came on for trial on May 7, 1937, before District Judge Gibson on the petition of Aluminum Company of America for a preliminary injunction against certain law officers of the United States and again on June 22, 1937, before Circuit Judges Davis, Thompson and Biggs, sitting by special assignment as judges of the District Court of the United States for the Western District of Pennsylvania pursuant to an expediting certificate filed by the Attorney General of the United States under the Act of Congress dated February 11, 1903, 544, c. 32, Stat. 823, as amended, upon the issues formed by the petition of Aluminum Company of America for a final injunction and the answer of the respondents thereto. At the hearing on May 7, 1937, William Watson Smith, Frank B. Ingersoll, William R. Scott, William H. Eckert, and Leon E. Hickman appeared as counsel for Aluminum Company of America, and Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, and N. A. Townsend, Jr., Special Attorney, appeared as counsel for the respondents. At the hearing on June 22, 1937, William Watson Smith, Frank B. Ingersoll and Leon E. Hickman appeared as counsel for the

Aluminum Company of America, and Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, and John W. Aiken, Special Assistant to the Attorney General, appeared as counsel for the respondents.

[fol. 449] The petitioner, Aluminum Company of America, offered the oral testimony of George R. Gibbons at the hearing of May 7, 1937, and the oral testimony of George R. Gibbons and Charles E. Hughes, Jr., on June 22, 1937. No other oral testimony was offered by either the petitioner or the respondents. Both petitioner and respondents introduced documentary evidence, which is more fully hereinafter described in context.

Prior to the taking of testimony on May 7, 1937, the following colloquy between counsel and the Court occurred:

COLLOQUY

"Mr. Smith: We are ready to proceed with our application for preliminary injunction in the Aluminum case. We have one witness, who will be very short, Your Honor.

"Mr. Jackson: May it please the Court, we have on behalf of the parties who have been summoned here filed a special appearance with the motion to quash the service and challenge the jurisdiction.

The Court: Perhaps we had better hear that motion first.

"Mr. Jackson: That is what impressed me as the correct procedure.

"Mr. Smith: If your Honor please, we are quite willing to stipulate that the participation of counsel in the cross examination of our one witness will not waive his right to present all of his motions, but I think that on this application for preliminary injunction the orderly procedure would be for us to put this witness on, and then we will be through with that, because part of our argument will depend on what he says.

The Court: It doesn't make much difference, I presume. However, in a temporary restraining order the rule is that after two days' notice the other party may appear and move to dismiss the temporary restraining order. True, this is [fol. 450] the day fixed for hearing, and it perhaps does not matter very much; but, logically, I am inclined to think that the motion should come first. However, I will say this:

that I will later hear your testimony, while taking under consideration the motion to dismiss.

There followed an argument of counsel on the motion to quash the service, after which the following colloquy took place.

Mr. Jackson: I would like to have it stipulated between counsel, and approved by the Court, that the participation of the Government attorneys who are summoned here in the proceedings from this point on does not prejudice or waive their position as taken in the motion filed, the Court having taken that motion under advisement.

The Court: I think you certainly should do that, in view of the Court's attitude at the start; I told you that I would do that, with that understanding.

"Mr. Smith: We so stipulate, if the Court please.

The Court: All right; let the record so show".

Following this colloquy testimony was taken in support of the petitioner's application for a preliminary injunction as follows:

Petitioner's Case at the Hearing Held on May 7, 1937

Direct examination:

GEORGE R. GIBBONS, called as a witness on behalf of the petitioner, testified as follows:

I live in Pittsburgh, Pennsylvania. I have lived there for about twenty-two years.

I have been connected with the Aluminum Company of [fol. 451] America since February, 1901, approximately thirty-six years. My connections started rather humbly, as an operative in the mill, then as an analyst in the laboratory, clerk in the mill, paymaster, chief clerk, assistant to the general sales manager; later as secretary, second vice president, vice president, senior vice president, director, and I am now the secretary and senior vice president and a director of the company. I became the secretary of the company in 1910. I became a director of the company in 1927. I became the second vice president in 1911, and was elected under the title of vice president in 1916. I have had close contact with the company's business and affairs, in my various capacities.

The paper marked Petitioner's Exhibit No. 1 is a copy of an equity subpœna issued from the District Court of the

United States for the Southern District of New York, in the case entitled United States of America, Petitioner, vs. Aluminum Company of America et al., defendants, Equity No. 85-73, attached to which is a petition bearing the same caption. Those papers were served on the Aluminum Company of America by a United States Deputy Marshal, on April 29, 1937. I was present.

There was introduced at this point as petitioner's Exhibit No. 1 a copy of an equity subpœna issued from the District Court of the United States for the Southern District of New York in the case entitled United States of America, Petitioner, v. Aluminum Company of America, et al., Defendants, Equity No. 85-73, and an attached petition bearing the same caption. The subpœna is attached to this statement of evidence as part of petitioner's Exhibit No. 1, but the aforementioned petition is not so attached because it is set forth [fol. 452] at length in the record in this case at pages 92-135. Following the introduction of petitioner's Exhibit No. 1, counsel for the petitioner made the following statement:

"Mr. Smith: We offer in evidence Petitioner's Exhibit No. 1, for the purpose of showing the institution of the suit in the District Court of the United States for the Southern District of New York, and for the purpose of showing the character of the suit.

If your Honor please, I want to call your attention to this fact: That the original papers in the 1912 proceeding are not on the court's file, and we have made every effort to get them, by inquiring of the Clerk, and the Clerk has made some search and tells us that she does not know where the papers are. We had thought that they might possibly have been withdrawn at some time by the United States Attorney for some proper purpose, and perhaps he had them, but the Clerk inquired, and I am told that the United States Attorney informs her that he does not have them. And I therefore desire to offer in evidence here, in substitution for this old record, copies that we know to be accurate copies, which can be identified by this witness; and I understand opposing counsel has no objection. Is that right?

"Mr. Jackson: That is right. If there are any additional documents, we will supply them, if we can find them.

(Various papers marked respectively Petitioner's Exhibits No. 2 to 7, inclusive.)

The testimony of the witness was resumed as follows:

Petit-oner's Exhibit No. 2, is a Chancery subpœna issued under date of May 16, 1912, by the Clerk of the District Court of the United States for the Western District of Pennsylvania, in the case of United States of America against Aluminum Company of America. Exhibit No. 3 is a copy of [fol. 453] the Petition in Equity filed by the United States of America, petitioner in that proceeding. Exhibit No. 4, is a copy of the Answer filed by the Aluminum Company of America in that proceeding. Exhibit No. 5 is a copy of the Consent Decree entered June 7, 1912, in that proceeding. Exhibit No. 6 is a petition of the defendant for modification of the decree, filed in that proceeding on October 25, 1922. Exhibit No. 7, is the supplemental decree entered October 25, 1922, modifying the consent decree. The Aluminum Company of America, has had in its possession, ever since the year 1912, the subpœna, Exhibit No. 2, the copy of the petition, Exhibit No. 3, and the copy of the answer, Exhibit No. 4, together with the copy of the consent decree, Exhibit No. 5. I believe these are correct copies of the originals of those various papers.

"Mr. Smith: In connection with Petitioner's Exhibit No. 6, the petition for modification of the decree, filed in 1922, this was not in the possession of the witness, but we vouch for the correctness of it, if the Court please. I understand counsel for the other side have no objection to that.

"Mr. Jackson: I will raise no question.

The testimony of the witness was resumed as follows:

Exhibit No. 7, which is the modifying decree, entered October 25, 1922, which is certified, has been in the possession of the Aluminum Company of America, ever since a few days later than October 25, 1922.

Counsel for the petitioner then offered in evidence the exhibits hereinbefore identified and made a motion, which was granted, as follows:

[fol. 454] "Mr. Smith: Counsel for the petitioner, Aluminum Company of America, offer in evidence Exhibits Nos. 2, 3, 4, 5, 6 and 7, and ask that they be substituted on the record, for the reason that the originals are no longer on the file; with the understanding that either side, if these

papers should prove to be in any respect inaccurate, may correct that by proper application to the Court at any time.

The Court: It will be so ordered.

Exhibit Number 2 is attached to this statement of evidence but exhibits 3, 4, 5, 6 and 7, are not so attached for the reason that they are a part of the record and are printed with it as follows: Exhibit No. 2 at Page 267; Exhibit No. 3 at page 8; Exhibit No. 4 at page 36; Exhibit No. 5 at page 64; Exhibit No. 6 at page 73; and Exhibit No. 7 at page 77.

The testimony of the witness was resumed as follows:

Referring to the petition of the United States in the New York suit, the corporate defendants named therein which are one hundred per cent. subsidiaries of the Aluminum Company of America, are the Aluminum Cooking Utensil Company; Aluminum Ore Company; Aluminum Seal Company; Alcoa Power Company, Limited; Alton and Southern Railroad; Bauxite and Northern Railway Company; Carolina Aluminum Company; Cedars Rapids Transmission Company, Limited; Knoxville Power Company; Louisiana Terminal Company; Massena Securities Corporation; The Massena — Railroad Company; Nantahela Power and Light Company; —inion Steamship Corporation; the Republic Mining and —ing Company; the St. Law-
[fol. 455] rence River Power Company; St. Louis and Ohio River Railroad; the Surinaamsche Bauxite Maatschappij, and United States Aluminum Company. The Franklin Fluorspar Company appears in the New York suit as a one hundred per cent subsidiary, but the Franklin Fluorspar Company was liquidated in 1935 and its properties turned over to the Aluminum Ore Company, a one hundred per cent subsidiary.

"Mr. Smith: That was an inadvertent error, if the Court please, in the New York proceedings; and I may say it is an inadvertent error of our own in listing them in our petition, which was prepared under great stress in the matter of time."

The testimony of the witness was resumed as follows:

Referring to the individual persons who are named as defendants in the New York suit, the names of each one

who is an officer or director of the Aluminum Company, and also the name of each one who was a former director, giving each man's name and his office right with the name are as follows:

Arthur V. Davis, Director and Chairman of the Board;
Roy A. Hunt, Director and President;
Edwin S. Fickes, Director and Senior Vice President in charge of Engineering;
George R. Gibbons, Director, Senior Vice President, Secretary, and in charge of sales, advertising and promotional work;
Robert E. Withers, Director, Senior Vice President in charge of finance, and Treasurer;
C. B. Fox, Vice President in charge of alumina operations;
Safford K. Colby, Vice President in charge of advertising and promotional work;
[fol. 456] Winthrop C. Neilson, Vice President in charge of bauxite operations;
George J. Stanley, Vice President in charge of sales;
Irving W. Wilson, Vice President in charge of production and fabrication;
David K. E. Bruce, Director;
George H. Clapp, Director;
Richard K. Mellon, Director;
Paul J. Urquhart, Vice President in charge of accounting;
J. R. D. Huston, Assistant Secretary and Assistant Treasurer;
C. L. Lycette, Assistant Secretary;
J. J. Demskie, Assistant Treasurer.

Mr. George C. Allen was formerly a Director, but no longer is. Mr. Allen became a director in 1926. He resigned in 1936.

Mr. Andrew W. Mellon was formerly a Director, but no longer is. He was a director at the time of the consent decree in 1912. He ceased to be a director in 1921.

The petition in the New York suit mentions Alvah K. Lawrie, but he is dead. He died in December, 1936. He had been a Director of the Company but he was not a director at the time of his death. Although my recollection is only approximate, I believe he ceased to be a director about ten years ago.

The Aluminum Company of America and its one hundred per cent subsidiaries which I have named, and its present or former officers and directors whom I have named, will be compelled immediately to engage New York counsel to represent them in the New York suit and enter their ap-[fol. 457] pearance promptly in that suit, to begin to prepare their defense, and to file their answers and to make their defense in said suit, if this preliminary injunction is not granted. Our company, up to this time, has not employed New York counsel to represent the company or its one hundred per cent subsidiaries and these officers and directors.

The Aluminum Company is a corporation incorporated under the laws of the State of Pennsylvania. The principal office of the Aluminum Company of America is in the Gulf Building, in Pittsburgh, Pennsylvania.

All of these officers that I have named in my testimony are regularly at the principal office in Pittsburgh, in the discharge of their duties, with the exception of Mr. Fox and Mr. Neilson. Mr. Fox resides in St. Louis, but his business activity is in East St. Louis. He is in charge of the alumina plant. Mr. Winthrop C. Neilson lives in Philadelphia, or a suburb of Philadelphia perhaps. These officers whom I have named are at its principal office in Pittsburgh, except when they are called out on company business. Mr. Arthur V. Davis is accustomed to spend most of what would term the working part of the week in Pittsburgh; he frequently spends his weekends in New York. He usually comes over to arrive in Pittsburgh on Tuesday morning, or perhaps it might be Monday, or it might even be Wednesday; but as a rule it is Tuesday. And then he remains here until Thursday or Friday night before going to New York. With these exceptions that I have given, all those who are officers devote their whole time to the company's business in the office here in Pittsburgh, except [fol. 458] when called away on the company's necessary business.

The company occupies with its principal office in the Gulf Building, Pittsburgh, 115 rooms in the Gulf Building, located on the sixth, eighth, eighteenth, nineteenth, twentieth, twenty-first and thirty-seventh floors. This is approximately 50,500 square feet of space. The accounting records, correspondence records, contracts, in

fact practically all of the company's active records, are kept in that principal office. I have had an estimate made showing that about 4,200 lineal feet, a little short of one mile, I might say, of space in the principal office in Pittsburgh are occupied by these various records in the main office in Pittsburgh.

The employees in the Accounting Department of the Pittsburgh office (including those engaged in the receipt and filing of orders) number 119. There are 376 employees altogether in the Pittsburgh office. I would estimate we have between twenty and thirty file clerks in the Pittsburgh office; I am not entirely sure.

In addition to these files in the Pittsburgh office we have files of books and records at New Kensington. We, wisely or unwisely, write about a million and a quarter letters a year in our company, and they and other records accumulate pretty fast, so we have built a fireproof building at New Kensington for the storage of records and such things, and when our office becomes overcrowded we transfer the records to New Kensington in this storage vault. I had an estimate made, which shows there are about 13,900 feet of storage space occupied by these books and records in the storage vault in New Kensington. I have been frequently [fol. 459] at the place where those records are in New Kensington and also here in Pittsburgh. In my judgment those estimates are approximately correct. Our company has referred constantly to these books and records in the Pittsburgh office and in the New Kensington office, in conducting its business.

New Kensington is approximately eighteen miles from Pittsburgh.

In defending this suit, if it should be brought and maintained in New York against this company, I should think, these books and records of our company would have to be referred to frequently and in great detail. We would of course be very much handicapped in conducting our routine business in Pittsburgh if our records were as far away as New York, or any part of them even were as far away as New York.

The absence of the employees or officers of the company, if they are drawn to New York for the purpose of preparing to defend, or assisting in the defense in this suit will be a great handicap, of course, because these men are actively

and constantly engaged in the pursuit of their duties here in Pittsburgh and wherever it may be on company work; and it is peculiarly so now, I think, because the company's affairs are such that we are extraordinarily busy in our present work and in contemplated work. There is a heavy demand for aluminum. We are engaged in considerable expansion-work, and in my thirty-six years of experience with the company I don't think I have ever seen our people busier than they are today.

These officers, these vice presidents and others are constantly called to the telephone in answering requests from [fol. 460] all over the country.

With respect to employing New York counsel for preparing an Answer in this case, if the case is to be conducted in New York, I should think there would be tremendous urgency, because I understand we have to reply within a limited time to the bill filed in the New York court, and we naturally regard this as a very important case, and we would want to employ counsel, I should think, at once and get after that job.

I have read the entire petition in the New York suit. I would think that it would entail a complete and comprehensive examination by the New York counsel of the affairs of the company, extending back at least as far as 1902. I think it would take a great deal of time if the suit has to be conducted in New York, in view of the situation as to the books and records and the duties of the officers of the company in conducting its business.

I would think we would be tremendously hampered in defending this suit in New York, if we were away from our storage vaults, our records, and all of the many people who are expert in going over these records, selecting out of them information that might be desired, need for which might come up at a moment's notice. In fact, I can't imagine anything that would be so hampering to us as to deprive us of prompt and thorough access to our records.

The witness also testified on cross-examination as follows:

I would think that there is not anything in this bill filed in New York which would require records in addition to what would be required by a reconsideration of the bill in the old case in Pittsburgh. It is all the same, whether we

proceed with that case in New York or have a hearing on the old case here in Pittsburgh, so far as the records being [fol. 461] available in either instance, but in one instance they would be readily available, and available with difficulty in the other. I would anticipate that the very large number of examinations which would be called on in the New York case would probably be identical with the very large number of examinations that would be called on in the Pittsburgh case. There would not be any additional ones required in New York. I think they would be tremendous in either case, and identical. I cannot anticipate a situation where there are any additional ones in New York.

I am sure our company has been sued in New York before. We employed New York counsel, I think, in every New York case.

The Aluminum Company of America has a sales office in New York City. We have about ten or fifteen rooms in New York. I think it is on the twenty-fifth floor of the New York Central Building, about half of that floor, as I recall it.

I think Aluminum Limited has offices in Montreal, Canada, and in the British Empire Building in New York City; I know they have in the British Empire Building.

Aluminum Goods Manufacturing Company has its office in Manitowoc, Wisconsin. I know of no other offices. I know they do have sales offices throughout the country, but no other office where records are kept.

Aluminum Manufacturers, Incorporated, maintains a secretary, I think it is, in Cleveland, Ohio, and I believe the president, who is an attorney, has his office in Cleveland.

The Ocean Dominion Steamship Corporation has its office at 17 Battery Place, New York. That is its only office. All of its records would be kept there. It is a corpora- [fol. 462] tion primarily devoted to hauling our bauxite. The major portion of it we bring from South America, and that is their function. Its ships, as I understand, stop at ports enroute to the United States, where it unloads its bauxite, and South American ports where it loads its ships.

The Republic Mining and Manufacturing Company is not a New York corporation. It has its business office in New York City in the New York Central Building. It may have a corporate office elsewhere. That company is the owner of bauxite deposits in the United States. These de-

posits are not as large as we wish they were. The company owns some bauxite in the United States. According to my information it is not correct to state that it only owns ninety per cent. I think its corporate meetings are held in New York, and its corporate records kept there. I may say that the records that would be desirable from our standpoint in connection with this petition filed in the New York suit are not kept in New York; they are kept in Pittsburgh. It does conduct its current business activity out of its New York office, because it is primarily a seafaring company, since it has to go down to the sea after its bauxite, and it has to be close to the sea.

The St. Lawrence River Power Company is a New York corporation.

I think David K. E. Bruce either resides in New York or Long Island; my impression is it is Long Island.

[fol. 463] This concluded the testimony of the witness, after which the petitioner rested its case for a preliminary injunction. The respondents offered no testimony and the hearing was closed.

Petitioners' Case at the Hearing Held on June 22, 1937

Objections to Proceeding

Prior to the taking of testimony counsel for the Aluminum Company of America presented objections to the proceeding as follows:

"Judge Davis: All right, gentlemen, are you ready to proceed?

"Mr. Smith: If the Court please, we understand that this is a final hearing on the question of whether or not the Aluminum Company should have an injunction as prayed for in this case, and before we go into that hearing we should like to preserve our rights by filing three formal objections. You may recall that we had the question up in Philadelphia about filing objections, you remember, and we should like, so that we may get these exactly right, we should like to file them with your Honors, and if there is no objection we should like to have them also copied into the minutes of the testimony. Would that be agreeable to the Court?

"Judge Davis: All right, sir, if there is no objection."

The objections of Aluminum Company of America were copied into the transcript of the testimony at this point but

are not quoted in this statement of the evidence for the reason that they are set forth at length as a part of the record at page 162 thereof.

[fol. 464] "Mr. Jackson: May it please the Court, in view of the fact that the special appearance by the Government officers, who have been served outside of the jurisdiction in a manner which we think is not sufficient to confer jurisdiction, is set forth in the objections of the Aluminum Company we do not need to repeat it. We submit to the decision of this Court both our objections and counsel's objections and we decline to enter into any bargain about jurisdiction. We are not here to bargain with the Aluminum Company, we are here to submit the rights of the Government to the protection of this Court.

"Judge Davis: Well, gentlemen, we will reserve decision on these objections and proceed with the case, and we will act on them later.

"Mr. Jackson: Yes, sir.

"Mr. Smith: Yes, sir, and if the Court should overrule any of those objections would you be good enough to allow us an exception?

"Judge Davis: Yes, we will."

[fol. 465] Counsel for Aluminum Company of America, petitioner, then offered in evidence portions of its petition for an injunction (which is set forth at p. 78 of the Record) which were not denied by the answer of the respondents (which appears at pp. 153 of the Record), as follows:

OFFER IN EVIDENCE

"Mr. Smith: If your Honors please, we desire to offer in evidence certain portions of the petition filed by the Aluminum Company of America * * * which have been admitted or not denied by the United States. * * * counsel for the Aluminum Company offer in evidence the following portions of the first paragraph of the petition of the company filed on April 29, 1937:

"1. Aluminum Company is a corporation organized and existing under the laws of the State of Pennsylvania and is a citizen of said State and a resident of the City of Pittsburgh in the Western District of Pennsylvania. Aluminum Company's principal office is in the City of Pittsburgh,

Pennsylvania, in which office its business is principally transacted. * * *".

We also offer in evidence the second paragraph of this petition, which we believe is admitted in full, as follows:

"2. On May 16, 1912, United States of America instituted the above entitled proceeding in equity (hereinafter referred to as the 'first suit') against Aluminum Company by a petition filed in this Honorable Court at No. 159 November Term, 1912, in Equity. On June 1, 1912, Aluminum Company filed its answer. On June 7, 1912, upon motion of the United States of America, consented to by Aluminum Company, a decree of this Honorable Court (hereinafter referred to as the 'consent decree') was entered in said proceeding by the Honorable James S. Young, United States District Judge. The said decree has never been appealed [fol. 466] from and still remains in full force and effect as modified as hereinafter in this paragraph stated. On October 25, 1922, Aluminum Company filed in said proceeding its petition to modify the consent decree so that nothing therein contained should be construed to enjoin or restrain it or any company or companies subsidiary to or affiliated with it from at once or from time to time acquiring, holding, exercising all rights of ownership in and disposing of any interest or interests, either controlling or otherwise, in the capital stock or securities of two Norwegian corporations therein mentioned or any properties, plants, power rights or contracts of said two corporations then or thereafter acquired by them or either of them, or in any corporation or corporations or unincorporated associations, companies or partnerships which may at any time be organized or formed to take over the whole or any part of the capital stock, securities, rights or properties of said two Norwegian corporations or either of them. On October 25, 1922, with the consent of the plaintiff acting by the then Attorney General of the United States, the consent decree was modified by a supplemental decree in accordance with the prayers of Aluminum Company's petition for modification."

We offer also the third paragraph of the petition, which is admitted, and reads as follows:

"3. On April 23, 1937, Homer S. Cummings, Attorney General of the United States, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Special Assistant to the

Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, [fol. 467] United States Attorney, acting in their capacities as attorneys and agents of the United States of America, instituted in the District Court of the United States in the Southern District of New York a proceeding in equity, No. 85-73 in which the United States of America is plaintiff and Aluminum Company of America and others are defendants, by filing on said date in said court a petition, a copy of which is attached hereto.

The said proceeding in the District Court of the United States for the Southern District of New York is hereinafter referred to as the "New York suit."

In connection with that paragraph 3 we offer in evidence the copy of the petition in the New York suit which is attached as an exhibit thereto, this being done for the purpose of showing the bringing of the New York suit and the character of it and the time when it was brought, and when the subpœna was issued. May I have the original record for a moment, Mr. Rowland? I want to see the petition."

The New York petition, which was offered in evidence as an exhibit, is not attached to this statement of testimony, inasmuch as it is set forth at length at pages 92-135 of the Record.

"Mr. Jackson, you will recollect that this paper is a paper Mr. Gibbons said was served on him on April 29th.

"Mr. Jackson: Well, I have no objection, in fact, I wouldn't have any objection to your putting this whole record—

"Mr. Smith: Well, I merely wanted to know whether you would allow me to say it was served on that day, or do you want it proved?

"Mr. Jackson: Oh, I would say it was served.

"Mr. Smith: We also offer in evidence a copy of the petition filed in the New York suit, Equity number 85-73, and the subpoena attached thereto, and I understand I may say it is agreed between counsel that this petition, this copy here and this subpœna, was served on the Aluminum [fol. 468] Company of America on the 29th day of April,

1937. I ask your Honor's attention to the fact that the subpoena is dated April 27, 1937.

"We offer in evidence the following portion of the fifth paragraph of the petition:

"5. The consent decree is binding upon • • • the Aluminum Company and by its terms it is binding also upon all the officers, agents and representatives of the Aluminum Company. The following 100% subsidiaries of Aluminum Company named as defendants in the New York suit, to wit, the Aluminum Cooking Utensil Company, Aluminum Ore Company, Aluminum Seal Company, Alcoa Power Company, Limited, Alton and Southern Railroad, Bauxite and Northern Railway Company, Carolina Aluminum Company, Cedar Rapids Transmission Company, Limited, Franklin Fluorspar Company, Knoxville Power Company, Louisiana Terminal Company, Massena Securities Corporation, The Massena Terminal Railroad Company, Nant-hala Power and Light Company, Ocean Dominion Steamship Corporation, The Republic Mining and Manufacturing Company, The St. Lawrence River Power Company, St. Louis and Ohio River Railroad, Surinaamsche Bauxite Maatschappij and The United States Aluminum Company are agents and representatives of the Aluminum Company and are bound by the terms of the consent decree. The following named individual persons who are named as defendants in the New York suit are officers or directors of the Aluminum Company and are bound by the terms of the consent decree, viz., Arthur V. Davis, Roy A. Hunt, Edwin S. Fickes, George R. Gibbons, Robert E. Withers, C. B. Fox, Safford K. Colby, Winthrop C. Neilson, George J. Stanley, Irving W. Wilson, David K. E. Bruce, George E. Clapp, Richard K. Mellon, Paul J. Urquhart, J. R. D. Huston, C. L. Lycette, and J. J. Demskie. [fol. 469] George G. Allen, named as a defendant in the New York suit, until recently has been a director of Aluminum Company and as such director was bound by the terms of the consent decree.

Andrew W. Mellon, named as a defendant in the New York suit, was a director of Aluminum Company at the time of and for a period after the entry of the consent decree and as such director was bound by the terms of the consent decree.

By its terms the consent decree enjoins and restrains the Aluminum Company, its officers agents and representatives from performing any acts contrary thereto not only at the time it was entered and now but also in the future."

In connection with that offer I should explain to the Court that there is an error in paragraph 5 with respect to the Franklin Fluorspar Company, which has since been dissolved, and we will explain that by testimony in a moment.

I am not certain whether it is necessary, I cannot think it is necessary to offer in evidence your own records, you are sitting here in this 1912 proceeding, but if there be any doubt on the subject I offer in evidence the petition in the 1912 case, which was filed—that is, the petition of the United States—which was filed on May 16th, 1912, the answer of the Aluminum Company thereto, which was filed on June 1st, 1912, the consent decree, which was entered on June 7th, 1912, the petition for modification of the decree which was filed October 25, 1922, and a supplemental decree of modification which was filed October 25th, 1922.

(The aforementioned exhibits are not attached to this statement of testimony inasmuch as each appears in the record, the petition at page 8, the answer at page 36, the consent decree at page 44, the petition for modification at page 73, and the supplemental decree at page 77.)

[fol. 470] "We offer in evidence the following portion of the 11th paragraph of the petition of Aluminum Company filed April 29, 1937 which is not denied by the answer, as follows—

" '11. That unless enjoined and restrained by the temporary restraining order and the injunction of this Honorable Court, the above named Homer S. Cummings, Robert H. Jackson, Wendell Berge, Walter L. Rice, John W. Aiken, F. Gwyn Harper, Jr., N. A. Townsend, Jr., and Lamar Hardy, will prosecute the New York suit * * *.' "

Direct examination.

GEORGE R. GIBBONS, called as a witness on behalf of the petitioner, testified as follows:

I have lived in Pittsburgh, Pennsylvania, within the city proper, about twenty-two years; in the vicinity, about

thirty-six years. I have been connected with the Aluminum Company of American for a little over thirty-six years, starting as a mill hand, then as an analyst in the laboratories, a mill clerk, paymaster, chief clerk, assistant to the general sales manager, secretary, second vice-president, vice-president, and I am now senior vice-president and secretary of the Company. I am also a director of the company. I became secretary in February, 1910 and a director in February of 1927. I was a second vice-president in 1911, vice-president in 1916, and senior vice-president in 1931. I have had close contact with the company's business and affairs in my various capacities.

Franklin Fluorspar Company was liquidated in 1935. Its properties were turned over to a company known as Aluminum Ore Company, a hundred per cent. subsidiary of the Aluminum Company of America.

[fol. 471] The Aluminum Ore Company owned the stock of the Franklin Flourspar Company. The Aluminum Ore Company is named as one of the one hundred per cent. subsidiaries in the New York petition.

Referring to the individual persons who are named as defendants in the New York suit, the name of each one who is an officer or director of the Aluminum Company, and also the name of each one who was a former director, giving each man's name and his title, and giving his office right with the name, are as follows:

Arthur V. Davis, director and chairman of the board.

Roy A. Hunt, director and president of the Aluminum Company.

Edwin S. Fickes, director and senior vice-president in charge of engineering.

George R. Gibbons, director, senior vice-president in charge of sales and promotional activities, and secretary.

Robert E. Withers, director, senior vice-president in charge of finance, and treasurer.

C. B. Fox, vice president in charge of alumina production.

Safford K. Colby, vice-president in charge of promotional activities.

Winthrop C. Neilson, vice-president in charge of bauxite operations.

George J. Stanley, vice-president in charge of sales.

Irving W. Wilson, vice-president in charge of production of aluminum and fabrication of aluminum.

David K. E. Bruce, a director.

George H. Clapp, a director.

Richard K. Mellon, a director.

[fol. 472] Paul J. Urquhart, vice-president in charge of accounting.

John R. D. Huston, assistant secretary and assistant treasurer.

C. L. Lycette, assistant secretary.

J. J. Demskie, assistant treasurer.

George C. Allen was elected a director in 1926 and resigned in January of 1936.

Andrew W. Mellon was elected a director in 1893 and resigned in 1921.

Alvah K. Lawrie died in December of 1936. Prior to that time he was a director of the company. In my former testimony I said he ceased to be a director approximately ten years previous to his death. I found that that was not accurate in that the record indicates that he ceased to be a director about five years prior to his death.

Of these officers that I have named all are regularly at the principal office in Pittsburgh in discharge of their duties, except Mr. C. B. Fox and Mr. W. C. Neilson. Mr. Fox has his residence in St. Louis, Missouri, but his business activity is in East St. Louis, Illinois, just across the river from St. Louis, where the alumina operations of the company are carried on. An alumina manufacturing plant is there. Mr. Winthrop C. Neilson lives in a suburb of Philadelphia. These officers whom I have named, with the exception of Mr. Fox and Mr. Neilson, devote their time to the business of the Aluminum Company at its principal office in Pittsburgh, except when they are called out on company business.

[fol. 473] Mr. Arthur V. Davis, the chairman of the board, spends the working part of the week in Pittsburgh, that it to say, he has a residence in New York or the vicinity of New York and comes to Pittsburgh usually on Monday night or Tuesday night.

"Judge Davis: May I ask counsel the purpose of this testimony?

"Mr. Smith: This testimony, which will be very brief, is with a view to showing one of the points that we urge

in this case, that the company ought not to be called away from its principal office to defend itself for its life a long distance away. That is one of the considerations that we will urge upon the Court. This testimony will be very brief, if the Court please, I do not intend to protract it.

"Judge Davis: All right, proceed."

The testimony of the witness was resumed as follows:

Mr. Davis comes to Pittsburgh usually on Monday or Tuesday night and returns to New York on Thursday or Friday night. The principal office of the Company is in Pittsburgh, and occupies approximately 50,500 square feet, consisting of 115 rooms, comprising all of the 6th, 8th, 18th, 19th, 20th and 21st floors and part of the 37th floor of the Gulf Building, in Pittsburgh. All of its current books of record are kept in its principal office including correspondence. Books and records that are not current are kept in a fireproof vault in the town of New Kensington, at which we have a large plant, in which records are stored when they become so bulky that it is uneconomical or impractical to continue to keep them in the main office in Pittsburgh. There are 4,200 running feet of records in [fol. 474] the main office in Pittsburgh, and about 13,900 running feet of records at the storage vault in New Kensington. I have been in both of these places, that is, the Pittsburgh office, where the records are, and the New Kensington storage vault.

There are 119 employees in the accounting department of the Pittsburgh office, including as part of the department the receipt and filing of orders. There are 376 employees altogether in the Pittsburgh office. There are between 20 and 30 file clerks in the Pittsburgh office.

The Aluminum Company writes or receives about a million and a quarter letters in a year. It constantly refers to the books and records in the Pittsburgh office and in the New Kensington office in conducting its business. New Kensington is eighteen miles from Pittsburgh.

In defending this suit, if it should be brought and maintained in New York against our company, these books and records which are in the company's principal office and in the storage vault in New Kensington would have to be referred to very extensively and in great detail.

If those records or any considerable part of them are removed to New York for the purpose of any such trial

it would be very trying and difficult to carry on with these records out of our immediate reach.

The absence of the employees or officers of the company, if they are drawn to New York for the purpose of preparing to defend or assisting in the defense of this suit, would undoubtedly have a hurtful effect on the company's business, because these men are very actively engaged in their routine duties.

[fol. 475] There is an extraordinarily heavy demand for aluminum at present.

It is my recollection that I have read the petition in the New York suit. I believe it contains something like one hundred and three paragraphs.

I believe it would require complete investigation of the Aluminum Company's affairs extending back to the very beginning of the *of the* company in order to meet the averments in that suit.

The defense of the New York suit is a very vital matter to us, and it seems to me it would be thoroughly necessary to have all of our records at hand at all times if we are to represent the true facts in connection with the case. I cannot imagine our successfully showing these facts unless these records were readily at hand. I think that applies equally to the presence of the officers and employees of the company.

Cross-examination.

The witness also testified on cross-examination as follows:

In answer to the question whether or not is it my idea, that all of the records which I have described would have to be taken to the court, I would have no knowledge of what might be called for. In anticipation, at least, I would have no knowledge.

In answer to the question as to what records it is that I have testified about when I say that I have examined this petition and that it will be necessary to have these records in order to properly defend our rights. Our records that I referred to consist of correspondence and books of account.

I would have no opinion at all as to what correspondence it will be necessary to take to New York.

In answer to the question as to what paragraph of the bill will require the production of any correspondence in New York, there are a great many allegations made in [fol. 476] the bill that might require reference to any of the correspondence at any time, I should think.

I could only point out the particular allegations of the bill which I say will require the production of our correspondence by taking the bill and analyzing it. It might require the production of some documents, correspondence or records created since 1912, I should think.

As to whether I would not expect it to, the matters referred to in the 1912 decree are current, of course, to date, and the records which are current might equally apply, I should think, to the restrictions put upon us by the decree of 1912. I should think that our operations up to the present time and since 1912 might be the subject of examination in the New York suit, in New York.

We have a sales office in New York. Our space there occupies about fifteen rooms, I think, twelve or fifteen rooms. We do not have any office in Trenton. We have an office in Philadelphia which occupies about ten rooms. In the New York Office there are subsidiaries that also have office space there. The Republic Mining and Manufacturing has offices there.

The Ocean Dominion Steamship Company has an office, I think it is 27 Battery Place, in a different location than the sales office I referred to.

In answer to the question whether or not the combined office of our company and of its subsidiaries in New York would be considerably larger than I have indicated, I reply that it is not, according to my judgment, or I wouldn't have indicated it. The sales offices in New York, I think, are ten or fifteen offices, and the offices at 27 Battery Place, I really have no idea how many offices they are. That is a one hundred per cent owned subsidiary. I don't think [fol. 477] all of its records are kept in New York. I think they are transferred to the New Kensington vault as soon as they become bulky.

The St. Lawrence River Power Company is a New York Corporation with its principal place of business in New York State. Undoubtedly its records are transferred to New Kensington too. The practice is to gather up all of these records in New Kensington. The purpose of the New Kensington vault is to accommodate such records after they

have ceased to be what I call current. I really couldn't say whether such records of all of its one hundred per cent owned subsidiaries are all there or not. I would think the great majority were.

I am an officer of numerous other corporations. As to whether I would give you the list of other corporations of which I am a director or officer and the office held, I would have to refer to a record I have here, if you will let me get it. I don't have a list of it, which we could put in to save time, but I have a record from which I could select it, I think. It isn't that my directorships are so numerous that I cannot recall them off hand but we change the directors frequently. They are not matters of great importance in the subsidiaries, so I would have to refresh my mind on it. The subsidiaries are practically operating branches of the parent company, the Aluminum Company of America. I attach very little importance to my directorships in the subsidiaries.

[fol. 478] OFFER IN EVIDENCE

(The following list of officers and directors of the one hundred per cent subsidiaries of the Aluminum Company of America was submitted for the record:

"Alcoa Power Company, Limited

Directors:

T. J. Bostwick.
Gilles Dansereau.
E. S. Fickes.
J. A. Prude'homme.
P. J. Urquhart.
I. W. Wilson.
R. E. Withers.

Officers:

President	T. J. Bostwick.
1st Vice President	P. J. Urquhart.
2nd Vice President	I. W. Wilson.
Secretary	J. R. D. Huston.
Treasurer	J. A. Hughes.
Assistant Secretary	Gilles Dansereau.
Assistant Secretary	C. L. Lycette.
Assistant Treasurer	J. J. Demskie.
Assistant Treasurer	R. E. Withers.

Alcoa Supply Company

Directors:

E. S. Fickes.
G. R. Gibbons.
J. E. Housley.
Geo. J. Stanley.
P. J. Urquhart.
I. W. Wilson.
R. E. Withers.

[fol. 479] Officers:

President	J. E. Housley.
Vice President	G. R. Gibbons.
Vice President	P. J. Urquhart.
Secretary	J. R. D. Huston.
Treasurer	W. E. W. Lloyd.
Assistant Secretary	C. L. Lycette.
Assistant Treasurer	F. E. Rogers.
Assistant Treasurer	R. E. Withers.

Alton and Southern Railroad

Directors:

James Davis.
R. Durley.
J. R. Ford.
R. E. McClane.
W. J. Nuebling.
T. H. Pindell.
E. Woodward.

Officers:

President	T. H. Pindell.
Vice President	James Davies.
Secretary	J. R. Ford.
Treasurer	J. R. Ford.
Assistant Secretary	R. E. McClane.

Aluminum Colors, Incorporated

Directors:

S. K. Colby.
R. B. McKee.
G. J. Stanley.
P. J. Urquhart.
I. W. Wilson.

[fol. 480] Officers:

President	S. K. Colby.
Vice President	R. B. McKee.
Vice President	P. J. Urquhart.
Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	R. E. Withers.
Assistant Treasurer	J. J. Demskie.

Aluminum Cooking Utensil Company, The

Directors:

E. S. Fickes.
G. R. Gibbons.
E. M. Grable.
W. K. Henley.
P. J. Urquhart.
W. C. White.
R. E. Withers.

Officers:

President	W. C. White.
Vice President	G. R. Gibbons.
Vice President	E. M. Grable.
Vice President	P. J. Urquhart.
Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	W. K. Henley.
Assistant Treasurer	F. S. Bennett.
Assistant Treasurer	J. L. McCammon.
Assistant Treasurer	R. E. Withers.

[fol. 481] Aluminum Ore Company

Directors:

E. S. Fickes.
C. B. Fox.
G. R. Gibbons.
G. J. Stanley.
P. J. Urquhart.
I. W. Wilson.
R. E. Withers.

Officers:

President	C. B. Fox.
Vice President	G. R. Gibbons.
Vice President	P. J. Urquhart.
Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	R. E. Withers.
Assistant Treasurer	J. J. Demskie.

Aluminum Seal Company

Directors:

E. S. Fickes.
G. R. Gibbons.
J. K. Sharp.
G. J. Stanley.
P. J. Urquhart.
I. W. Wilson.
R. E. Withers.

Officers:

President	J. E. Sharp.
Vice President	G. R. Gibbons.
Vice President	D. H. Tilson.
[fol. 482] Vice President	P. J. Urquhart.
Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	R. E. Withers.
Assistant Treasurer	J. J. Demskie.

Bauxite & Northern Railway Company

Directors:

James Davies.
J. H. Doyle.
J. F. Gibbons.
J. A. Waggener.
E. Woodward.

Officers:

President	James Davies.
Vice President	J. A. Waggener.
Secretary	J. R. Ford.
Treasurer	J. R. Ford.
Assistant Secretary	R. E. McClane.

Carolina Aluminum Company

Directors:

S. K. Colby.
S. A. Copp.
E. S. Fiskes.
G. R. Gibbons.
G. J. Stanley.
P. J. Urquhart.
I. W. Wilson.
R. E. Withers.

[fol. 483] Officers:

President	G. R. Gibbons.
Vice President	P. J. Urquhart.
Vice President	I. W. Wilson.
Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	R. E. Withers.
Assistant Treasurer	J. J. Demskie.

Cedars Rapids Transmission Company, Limited

Directors:

E. S. Fickes.
G. R. Gibbons.
J. A. Hughes.
L. P. Thomason.
P. J. Urquhart.
I. W. Wilson.
R. W. Withers.

Officers:

President	G. R. Gibbons.
First Vice President	I. W. Wilson.
Second Vice President	P. J. Urquhart.
Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Assistant Secretary	P. L. Thomason.
Treasurer	J. A. Hughes.
Assistant Treasurer	J. J. Demskie.
Assistant Treasurer	R. E. Withers.

Kensington, Inc.

Directors:

E. S. Fickes.
G. R. Gibbons.
[fol. 484] E. M. Grable.
W. K. Henley.
P. J. Urquhart.
W. C. White.
R. E. Withers.

Officers:

President	W. C. White.
Vice President	G. R. Gibbons.
Vice President	E. M. Grable.
Vice President	P. J. Urquhart.
Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	W. K. Henley.
Assistant Treasurer	F. S. Bennett.
Assistant Treasurer	J. L. McGammon.
Assistant Treasurer	R. E. Withers.

Knoxville Power Company.

Directors:

E. S. Fickes.
G. R. Gibbons.
V. J. Hultquist.
Geo. J. Stanley.
P. J. Urquhart.
I. W. Wilson.
R. E. Withers.

Officers:

President	V. J. Hultquist.
Vice President	P. J. Urquhart.
Vice President	I. W. Wilson.
[fol. 485] Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	R. E. Withers.
Assistant Treasurer	J. J. Demskie.

Louisiana Terminal Company

Directors:

E. S. Fickes.
C. B. Fox.
G. R. Gibbons.
W. C. Neilson.
P. J. Urquhart.
I. W. Wilson.
R. E. Withers.

Officers:

President	C. B. Fox.
Vice President	C. L. Lycette.
Vice President	P. J. Urquhart.
Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	R. E. Withers.
Assistant Treasurer	J. J. Demskie.

Massena Securities Corporation

Directors:

E. S. Fickes.
G. R. Gibbons.
Geo. J. Stanley.
P. J. Urquhart.
R. T. Whitzel.
I. W. Wilson.
R. E. Withers.

[fol. 486] Officers:

President	G. R. Gibbons.
Vice President	P. J. Urquhart.
Vice President	I. W. Wilson.
Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	R. E. Withers.
Assistant Treasurer	J. J. Demskie.

Massena Terminal Railroad Company, The

Directors:

James Davies.
R. Durley.
A. E. Hawes.
Fred G. Kirkbride.
W. J. Huebling.
L. E. Olney.
T. H. Pindell.
Walter F. Willson.
E. Woodward.

Officers:

President	James Davies.
Vice President	L. E. Olney.
Secretary	J. R. Ford.
Treasurer	J. R. Ford.
Assistant Secretary	R. E. McClane.

Nantahala Power and Light Company

Directors:

D. Clark.
S. A. Copp.
W. C. Penn.
R. L. Smith.
J. E. S. Thorpe.

[fol. 487] Officers:

President	J. E. S. Thorpe.
Vice President	G. R. Gibbons.
Vice President	R. L. Smith.
Vice President	P. J. Urquhart.
Secretary	W. C. Penn.
Assistant Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	W. C. Penn.
Assistant Treasurer	R. E. Withers.

New Method Finance Corporation

Directors:

E. M. Grable.
W. K. Henley.
J. L. McGammon.
S. R. McCracken.
A. P. Miller.
L. J. Smith.
C. G. Towne.

Officers:

President	E. M. Grable.
Vice President	A. P. Miller.
Vice President	P. J. Urquhart.
Secretary	L. J. Smith.
Assistant Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	W. K. Henley.
Assistant Treasurer	F. S. Bennett.
Assistant Treasurer	J. L. McGammon.
Assistant Treasurer	R. E. Withers.

[fol. 488] Ocean Dominion Steamship Corporation

Directors:

Frank B. Cuff.
Harmon Lewis.
Lawrence Litchfield, Jr.
Winthrop C. Neilson.
Winthrop C. Neilson, Jr.
Samuel J. Simmons.
P. J. Urquhart.

Officers:

President & General Manager	Harmon Lewis.
Vice President	Frank B. Cuff.
Vice President	Lawrence Litchfield, Jr.
Vice President	P. J. Urquhart.
Secretary	Winthrop C. Neilson, Jr.
Assistant Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Assistant Secretary	Winthrop C. Neilson.
Treasurer	Winthrop C. Neilson.
Assistant Treasurer	Frank B. Cuff.
Assistant Treasurer	Winthrop C. Neilson, Jr.
Assistant Treasurer	R. E. Withers.

Republic Mining and Manufacturing Company, The

Directors:

Frank B. Cuff.
E. S. Fickes.
George R. Gibbons.
Harmon Lewis.
Lawrence Litchfield, Jr.
Winthrop C. Neilson.
Winthrop C. Neilson, Jr.

[fol. 489] Officers:

President	W. C. Neilson.
Vice President	Frank B. Cuff.
Vice President	Harmon Lewis.
Vice President	Lawrence Litchfield, Jr.
Vice President	P. J. Urquhart.
Secretary	W. C. Neilson, Jr.
Treasurer	W. C. Neilson.
Assistant Secretary	J. R. D. Huston.
Assistant Treasurer	R. E. Withers.

St. Lawrence River Power Company, The

Directors:

E. S. Fickes.
G. R. Gibbons.
G. J. Stanley.
P. J. Urquhart.
R. T. Whitzel.
I. W. Wilson.
R. E. Withers.

Officers:

President	G. R. Gibbons.
Vice President	P. J. Urquhart.
Vice President	I. W. Wilson.
Secretary	J. R. B. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	R. E. Withers.
Assistant Treasurer	J. J. Demskie.

St. Louis and Ohio River Railroad

Directors:

James Davies.
R. Durley.
W. J. Nuebling.
T. H. Pindell.
E. Woodward.

[fol. 490] Officers:

President	T. H. Pindell.
Vice President	James Davies.
Secretary	J. R. Ford.
Assistant Secretary	R. E. McClane.
Treasurer	J. R. Ford.

Surinaamsche Bauxitę Maatschappij

Directors:

Frank B. Cuff.
I. R. J. de Greve.
Harmon Lewis.
L. Litchfield, Jr.
J. C. Mollema.
Winthrop C. Neilson.
Winthrop C. Neilson, Jr.

Officers:

President	Winthrop C. Neilson.
1st Vice President	Frank B. Cuff.
2nd Vice President	Lawrence Litchfield, Jr.
3rd Vice President	J. C. Mollema.
Secretary	J. Post.
Assistant Secretary	Winthrop C. Neilson, Jr.
Assistant Secretary	A. van Mazijk
Treasurer	Winthrop C. Neilson, Jr.
Assistant Treasurer	A. van Mazijk.
Assistant Treasurer	J. Post.

United States Aluminum Company, The

Directors:

S. K. Colby.
E. S. Fickes.
[fol. 491] G. R. Gibbons.
G. J. Stanley.
P. J. Urquhart.
I. W. Wilson.
R. E. Withers.

Officers:

President	G. R. Gibbons.
Vice President	Allen B. Norton
Vice President	G. M. Rollason.
Vice President	P. J. Urquhart.
Secretary	J. R. D. Huston.
Assistant Secretary	C. L. Lycette.
Treasurer	R. E. Withers.
Assistant Treasurer	J. J. Demskie.

[fol. 492] The testimony of the witness on cross-examination was resumed as follows:

In general my duties with the Aluminum Company of America place me in charge of selling activity and promotional work, and as a director of the company I am frequently, I think, in consultation on matters that are somewhat outside of my immediate nominal duties. I am the keeper of the records of the corporate company. I am nominally that, as secretary. They are, at least, in my custody and control. I also perform a similar function with various of the subsidiary companies.

Now, among the defendants which have been named by me as one hundred per cent subsidiaries of the Aluminum Company of America, some of those were not created nor in existence in 1912. I wouldn't think that a large number were not.

Aluminium Limited was organized in 1928. It was organized by the Aluminum Company of America. It was organized to take over the foreign business of the Aluminum Company of America, with certain exceptions. The transfer to Aluminium Limited, the Canadian corporation, took place in 1928. Aluminium Limited turned over to Aluminum Company of America in 1928 all of its issued stock. Aluminum Company of America distributed that stock in 1928 to its stockholders. I don't know whether, at that time, Mr. Andrew W. Mellon, Mr. R. B. Mellon, and Mr. Arthur V. Davis owned, the three of them, more than fifty per cent of its outstanding stock.

[fol. 493] I have referred to the bill and the answer of the Aluminum Company of America in that respect, though what I was trying to say was that I have no recollection of the accuracy of your statement. It would be purely a matter of speculation as to whether that is the situation, but my best guess is that that is right. Stock of Aluminium Limited, then, was distributed so that at the moment of distribution it had the same proportions as the stock of Aluminum Company of America. All of that took place in 1928. Aluminum Manufactures, Incorporated, was organized about 1919. I am not sure of the exact year.

The Aluminum Ore Company was originally organized many years ago. I think it was 1909, although I am not too sure of that year. Then its name was changed to Alcoa Ore Company, and I think the same industry or activity was

later organized in a new corporation, but the original Aluminum Ore Company is identical with the Aluminum Ore Company which I think was organized under the laws of a different state at a subsequent time. To all practical effect the original Aluminum Ore Company is the Aluminum Ore Company of today.

To some extent I am familiar with the answer which Aluminum Company of America filed in the New York proceeding the other day. I read it. I have read paragraph 8 of the Government's New York petition, which states:

"8. Defendant Aluminum Ore Company is a corporation organized in 1929 under the laws of the State of Delaware by Aluminum Company as a successor of the Aluminum Ore Company incorporated in 1909 under the laws of the State of Pennsylvania. It and the said predecessor corporation of the same name have been engaged since 1909 at East St. Louis, Illinois, in refining alumina from bauxite, * * *."

[fol. 494] Technically the Ore Company is not a change of name, it is a new corporation, but it is not a new corporation in the sense of being a new activity.

The Aluminum Seal Company *Company* was incoporated in 1914 under the laws of Pennsylvania. The Alcoa Power Company, Limited, was organized in 1925 under the laws of the Dominion of Canada. Originally that corporation merely held riparian rights. It has now developed a portion of those riparian rights, I believe, and is generating electricity from water power. It is transferring water power into electric energy. As to whether it is one of the chief sources of supply of power to Aluminium or subsidiaries of Aluminium, I have no idea how much power they get, if any. I think they get some, but I have no idea how much or what proportion it constitutes of their whole. In 1912 that activity was not being engaged in by Aluminum Company of America or by any of its subsidiaries.

The Alton and Southern Railroad was a corporation organized by the Aluminum Company in 1913 under the laws of the State of Illinois. It is a common carrier engaged in carrying the products of Aluminum subsidiaries and the products of the public.

Carolina Aluminum Company was organized in 1906. The Aluminum Company first became interested in that company in 1911, and I think acquired the company in 1912,

if I remember. It was then known as the Tallassee Power Company. In 1915 Aluminum Company purchased the properties of the Southern Aluminum Company. I do not think that at that time it consolidated the power company and the Aluminum Company by having assets of one or the stock of one transferred to the other. I do not recollect when it was done. I thought that the Aluminum Company of America operated the properties which it bought from [fol. 495] the Southern Aluminum Company for a number of years under its name. Just when they were turned over to the Tallasee Power Company I do not remember.

All of these transactions just alluded to except the purchase of the Tallassee Power Company occurred substantially after 1912. The Cedars Rapids Transmission Company is a one hundred per cent subsidiary organized under the laws of the Dominion of Canada by the Aluminum Company. It is engaged in supplying power to our plant at Massena. The Massena plant got its power before the organization of that company from a development immediately contiguous to the plant, water from the St. Lawrence River. In fact, that whole Cedars Rapids Transmission is merely an elaboration of the original activity at Massena. As the plant grew it had to have more power, and the Cedars Rapids Transmission Company became a technical necessity because we had to pick up a little more power from another source and we thought it better to have a subsidiary company own the transmission line.

The Louisiana Terminal Company is a one hundred per cent subsidiary organized in 1928 by the Aluminum Company to engage in wharfage in Louisiana. It is a tipple or a derrick, that is all it is. It is a small company which consists of one derrick. It was organized subsequently. It was large enough so that we incorporated it in 1928 under the laws of the State of Delaware to do business in Louisiana.

The Massena Securities Corporation is a one hundred per cent owned subsidiary organized in 1929 under the laws of New York, but it merely perpetuated the activity of a previous company which ceased to exist, I do not remember why. I do not recall the circumstances. The unimportant detail by which certain subsidiaries were turned over to the Massena Securities Corporation occurred in 1929. As to its unimportance, and to whom unimportant,

I am merely referring to the fact that the Massena Securities Company was a corporation of a different name, and, [fol. 496] as has been pointed out, of a later incorporation, which merely carried on the activities which had been carried on by a previous company acquired, as I remember, back about 1906, 1907 or 1908, or about that time. I do not want to say that the Massena Securities Corporation in and since 1929 has held no properties that were not held previous to the decree in Pittsburgh. I do not think that is accurate.

The Nantahala Power and Light Company was organized in 1929 under the laws of the State of North Carolina. It was part of our general power scheme in the Tennessee mountains, which was begun in 1910 and 1911. We found it necessary at that time, or convenient in our operations to incorporate that company and to transfer properties to it.

The defendant Ocean Dominion Steamship Corporation is a one hundred per cent owned subsidiary organized by the Aluminum Company of America in 1925 under the laws of New York. Its principal business consists of bringing bauxite from the mines in South America to our plant in East St. Louis. It does not bring it quite to the plant, it brings it to this tipple referred to, or this derrick, down at the Louisiana Terminal site, at New Orleans. It constitutes an important link in our source of transportation between the bauxite mines in Dutch Guiana to the plant in East St. Louis. It is our chief link of water transportation. We do not bring bauxite from mines in British Guiana, because we have sold those mines. They went with the other properties that were turned over to Aluminium Limited. We kept certain mines in Dutch Guiana and turned over mines in British Guiana. We bring our own bauxite to East St. Louis from Dutch Guiana. We have also on occasion brought through this subsidiary certain quantities of British Guiana bauxite to East St. Louis for [fol. 497] Aluminium Limited or its subsidiaries. I do not know whether we are doing it now or not. The office of that steamship company is 17 Battery Place. It was organized in 1925. I do not think it has acquired a great deal of property since then. The only thing I know of is that I think it either bought a boat or tried to buy a boat

recently, that is the only one I remember, but whether it did or not I do not recall.

The present Republic Mining and Manufacturing Company was organized in 1929. It consolidated in its ownership the properties previously owned by two corporations. I won't admit that it is the largest owner of bauxite deposits in the United States today. I would like to, because we need the bauxite, but it does own fairly substantial deposits in the United States, wholly inadequate, however, for our needs. I could not possibly give an estimate of the percentage of known bauxite deposits of commercial value that the Republic owns. I have no knowledge on the subject, no idea. It has not acquired any since its organization, that I am aware of. It mines practically all of the bauxite used in the production of aluminum in the United States except such as we import from Guiana, although it should be borne in mind that the great majority of our bauxite, or a considerable majority of our bauxite comes from South America. The Republic Company is working its local deposits. It is mining all of the bauxite mined in the United States which is used for the production of aluminum, and we use that bauxite, but that bauxite constitutes a relatively small portion of the bauxite that we consume in making aluminum. There is other bauxite available in the United States in commercial quantities, commercially profitable to mine. None of the other bauxite is being purchased by the Aluminum Company of America.

[fol. 498] St. Louis and Ohio River Railroad was organized in 1920 under the laws of the State of Illinois and is a railroad common carrier. It carries the products of the Aluminum Company subsidiaries and of the public. It is one hundred per cent owned by the Aluminum Company.

Surinaamsche Bauxite Maatschappij was organized in 1916. It took over the deposits in Dutch Guiana and the mining operations there. It is a wholly owned subsidiary.

I have no knowledge at all concerning The Coalesced Company and The Aloxite Company.

When Aluminium Limited was organized, Mr. E. K. Davis went with that Canada corporation. Prior to that organization he was in charge of sales in the Aluminum Company of America. I know personally the defendants David K. E. Bruce, Paul Mellon, and Richard K. Mellon.

I have no definite knowledge of their age or whether any of them were of age in 1912.

From time to time since 1912 Aluminum Company has extended its business. We have extended our operations and practically all of these companies to which reference has been made are a natural and logical outgrowth of those activities which we were carrying on prior to 1912. As our corporation has expanded we have for one reason or another sometimes incorporated one activity which had previously been carried on under the name of the Aluminum Company of America; in other instances we have carried on an activity under the name of the parent company. The South American bauxite company to which I just alluded, incorporated, I believe, in 1916, was merely the outgrowth of a need for bauxite which we had, and when we needed more bauxite we went where we could get it, and we had to mine it under the name of a corporation organized under Dutch Guiana colonial laws. And so it has been [fol. 499] with practically all of these subsidiary activities to which reference has been made. They are natural outgrowths or limbs that have sprung from the main stem of the operation which existed in 1912. I do not want the Court to think that if we have ten or fifteen different deposits of bauxite in Arkansas or Dutch Guiana that we have got mining operations going on in each of those deposits. We have very small reserves of bauxite in the United States and only moderate reserves in Dutch Guiana, which constitute all of the bauxite we own outside the United States. In spite of the fact that we have only very moderate reserves, we turned over to a foreign corporation our reserves in 1928 in British Guiana. We have gone into new uses of aluminum from time to time and that makes the reserves of 1928, which looked very large then, look much smaller today.

In the hearing at Pittsburgh I was asked this question (page 64 of the Pittsburgh record):

"Q. Mr. Gibbons, will you state whether or not the Aluminum Company of America and its one hundred per cent subsidiaries which you have named, and its present or former officers and directors whom you have named, will be compelled immediately to engage New York counsel to represent them in the New York suit and enter their appear-

ance promptly in that suit, to begin to prepare their defense, and to file their answers and make their defense in said suit, if this preliminary injunction is not granted?"

and I answered:

"A. I believe they would have to."

The preliminary injunction was granted, but I have no idea at all how soon after it was granted that we retained [fol. 500] New York counsel. I had nothing to do with retaining counsel, if retained. As to whether I know that New York counsel has been retained and has filed an answer for our company in New York, I reply that I know the answer has been filed and I do not know anything about the retention of counsel. I saw the answer. I have not seen that New York counsel appear on it as counsel. I do not know whether New York counsel came to Pittsburgh to investigate our records or whether the records went to New York. I did not see any New York counsel around our Pittsburgh office. I have custody of the records. None of them have been made available to New York counsel by me. I have given a great deal of thought as to what records would be required to be taken to New York. In answer to the question whether I want to give the impression to the Court that I seriously believe that all of these million letters, or even a substantial part of them or all of our operation and sales records would be necessary in New York, I reply that I certainly want to give the Court the impression, if I can, that any one of a number of these letters might be called for, and that they ought to be readily available for search in connection with a suit such as this. They are kept eighteen miles from Pittsburgh in New Kensington, and we have a regular messenger service going back and forth between the New Kensington plant and our Pittsburgh office.

In answer to the question as to whether the Aluminum Company of America with its subsidiaries, which, according to the question, I have said are practically incorporated departments of the Aluminum Company, is not a local company to Pittsburgh, I reply that all of its activities are not carried on in Pittsburgh, but it is strictly a local company in the sense that its main office is there, its [fol. 501] records are there, its personnel is there, and it is just as much a local company to Pittsburgh as the Jones

and Laughlin Company, for example. The Aluminum Company of America has twenty odd sales offices in the United States. I am not sure of the exact number. I haven't the slightest idea how many Aluminium Limited has in the United States. I am in charge of sales. As to whether I have any idea whether Aluminium Limited has a sales office in the United States or not I would like to say that I have no knowledge of any sales office they have in the United States. As to whether they do not compete with the Aluminum Company of America in the United States, I reply that I have met them in competition. As to instances, I remember two or three, ingot competition, foil competition, and I think sheet competition. As to whether there has been competition, I recollect two or three occasions since their organization. I would have no particular knowledge of these because they never come to my attention. As to whether they entered into sales in the United States in competition with us, I say we have met their competition on one or two occasions. I don't know what they have done as to entering into sales. As to whether they sent salesmen in to get orders I have no knowledge. I never of my own knowledge knew an Aluminium salesman to be in the United States selling in the United States, but I have heard of their making sales in this country. I cannot name the company to whom they sold. It is in northern New York, a concern that uses foil. I think they manufacture closures, if I am not mistaken, caps and closures, bottle caps and closures. I have heard of several others, and yet they do not come to my recollection. They are not very frequent and I do not recall the individual companies where Aluminium sells in the United States. I do not know [fol. 502] what their activity has been in the solicitation of business in the United States. There has been some competition in the United States between Aluminum Company of America and Aluminium Limited since its organization. It has not been very much, I would not think, in importance.

In addition to the business in Guiana, the mines in Guiana, we also turned over to Aluminium Limited all of our then owned foreign activities, with a few exceptions to which allusion has been made. We turned over to them business activities located in France, England and Germany; Italy, Norway and, I believe, Yugoslavia, though my recollection is not clear on that point. I do not remember as to Spain, and as to Switzerland I think not. We did not in India nor

in Japan as I recollect. I am not aware of it if we did. In turning over foreign properties, some of those enterprises were making sales abroad. We turned over the sales and we also turned over supplies of bauxite as well as all of our foreign possessions of any sort with the exceptions mentioned. I do not know how many employees we have in the New York Central building. I would think that it might be twenty-five to forty. That is just a guess, however.

I do not know whether our business has grown from forty-four million pounds produced in 1911 to two hundred and twenty-four million pounds produced in 1936. I would not be familiar with that. As to whether our assets have grown from twenty-seven million in 1912 to one hundred and seventy-four million of net worth in 1934, and two hundred twenty-two million of assets in 1936, I do not remember the earlier figure at all. The approximation is that on December 31, 1934, the net worth of the Aluminum Company, as shown by its annual report, was one hundred sixty-nine million, five hundred thousand dollars. I do not know what [fol. 503] the metal production for that year was.

OFFERS IN EVIDENCE

"Mr. Jackson: I want to make part of this record the answer filed in the New York suit by the Aluminum Company of America on the 17th of June, 1937, and the forty-seven or eight accompanying answers of other defendants represented by Mr. Smith.

"Mr. Smith: I would like to know the purpose of this offer.

"Mr. Jackson: The purpose of the offer is to acquaint the Court, in the first place, with the scope of the proceedings in New York, the issues which are there raised for the purpose of litigation. The whole purpose, as I understand counsel, of this application is to prevent the trial of the New York case in so far as the Aluminum Company of America and its forty-seven or eight others are concerned. I want to introduce this offer, in the first place, for the purpose of informing this Court of the issues there, because counsel has stated that the issues and substance of the 1912 proceeding and of the proceeding in New York are identical, and I say this demonstrates that they are not.

"In the second place, I want to introduce it because throughout the answer are admissions, admissions which we consider important to this Court in determining the merits of this application, and the answer is sworn to by Roy A. Hunt, the president of the Aluminum Company, and is an official admission of the Aluminum Company.

"We want to offer it furthermore for the purpose of showing that before Judge Gibson it was argued very passionately that counsel must have this temporary injunction so as to avoid to the Aluminum Company the expense of employing counsel in New York. They got the injunction for the purpose of protecting them from that dire catastrophe, and they promptly filed the answer on the 17th of June in New York, obtaining New York counsel, and I [fol. 504] think that it bears very much on the merits of this application, and I wish to offer the answers that have been filed for the purpose of informing this Court as to anything which they contain.

"I think it would be rather absurd if we were to ask this Court to pass on whether the New York lawsuit and the Pittsburgh lawsuit were alike and we had before us only a part of the record which has already been made in New York.

"Mr. Smith: Since it is absurd, I do not wish to make any absurd objections, and, therefore, I won't make any.

"Judge Davis: All right, proceed.

"Mr. Jackson: May I have them marked?

"Mr. Jackson: I think this is a complete set, and I would like to ask counsel in this connection to stipulate that Mr. George G. Allen, one of the defendants, has defaulted and has not answered.

"Mr. Smith: I know nothing whatever about that and I cannot so stipulate.

"Mr. Jackson: I thought you represented him at one time.

"Mr. Smith: No; sir, we do not represent Mr. Allen at all. He has other counsel. His counsel is Mr. W. R. Perkins, in New York. We have nothing to do with Mr. Allen.

"Mr. Jackson: Well, I withdraw that request.

"Mr. Smith: Mr. Jackson, you are not offering any answers of people we do not represent here, are you?

"Mr. Jackson: No, I haven't looked them all over, but they are the ones you gave me. * * *

"I offer the answer of the Aluminum Company of [fol. 505] America, filed in New York June 17, 1937; the answer of Andrew W. Mellon, filed at the same time, the answer of Ailsa Mellon Bruce, filed at the same time, by same counsel; the answer of David K. E. Bruce; the answer of The Aloxite Corporation; the answer of The Coalesced Corporation; Richard K. Mellon; Sarah Mellon Scaife; Paul Mellon; The Union Trust Company of Pittsburgh, Executor of the estate of R. B. Mellon; Richard K. Mellon, as executor of the estate of R. B. Mellon; Jennie King Mellon, as executor of the estate of R. B. Mellon; Sarah Mellon Scaife, as executor of the estate of R. B. Mellon; United States Aluminum Company; and that unnamable Dutch corporation, that I will ask you to spell out for the record (Surinaamsche Bauxite Maatschappij); answer of the St. Louis and Ohio River Railroad; The Massena Terminal Railroad Company; The St. Lawrence River Power Company; Republic Mining and Manufacturing Company; the Ocean Dominion Steamship Corporation; Massena Securities Corporation; Louisiana Terminal Company; Knoxville Power Company; Cedars Rapids Transmission Company; Alton and Southern Railroad; Aluminum Seal Company; Bauxite and Northern Railway Company; Alcoa Power Company; Aluminum Ore Company; Aluminum Cooking Utensil Company; J. R. D. Huston; George R. Gibbons; C. B. Fox; J. J. Demskie; Roy A. Hunt; Safford K. Colby; George H. Clapp; Robert E. Withers; Arthur V. Davis; C. L. Lycette; George J. Stanley; Paul J. Urquhart; Irving W. Wilson; Carolina Aluminum Company; and Nantahala Power and Light Company.

[fol. 506] "Now, I think I should say that the offer of the Aluminum Company answer I contend is for the purpose of showing admissions made by the company in a legal proceeding. I do not contend that any other answer is necessarily binding on the Aluminum Company if it contained admissions. As a practical matter, I do not think they have much importance except as defining the issues, but we only offer the Aluminum Company and the parties covered by this injunction granted by Judge Gibson as binding the Aluminum Company of America. Others that are not parties to this proceeding and not covered by the injunction would not bind, and I just do not want to be misunderstood about that.

"Judge Davis: All right, gentlemen, they will be admitted.

"(The following answers filed June 17th, 1937, in the District Court of the United States for the Southern District of New York, in the matter of the United States of America versus Aluminum Company of America, Et Al., Equity No. 85-73, were marked Exhibits as follows:)

"Answer of Aluminum Company of America was marked Government's Exhibit 1.

"Answer of Andrew W. Mellon was marked Government's Exhibit 2.

"Answer of Ailsa Mellon Bruce was marked Government's Exhibit 3.

"Answer of David K. E. Bruce was marked Government's Exhibit 4.

"Answer of the Aloxite Corporation was marked Government's Exhibit 5.

[fol. 507] "Answer of the Coalesced Company was marked Government's Exhibit 6.

"Answer of Richard K. Mellon was marked Government's Exhibit 7.

"Answer of Sarah Mellon Scaife was marked Government's Exhibit 8.

"Answer of Paul Mellon was marked Government's Exhibit 9.

"Answer of the Union Trust Company of Pittsburgh, Executor, was marked Government's Exhibit 10.

"Answer of Richard K. Mellon, Executor, was marked Government's Exhibit 11.

"Answer of Jennie King Mellon, Executor, was marked Government's Exhibit 12.

"Answer of Sarah Mellon Scaife, Executor, was marked Government's Exhibit 13.

"Answer of The United States Aluminum Company was marked Government's Exhibit 14.

"Answer of Surinaamsche Bauxite Maatschappij was marked Government's Exhibit 15.

"Answer of St. Louis and Ohio River Railroad was marked Government's Exhibit 16.

"Answer of The Massena Terminal Railroad Company was marked Government's Exhibit 17.

"Answer of The St. Lawrence River Power Company was marked Government's Exhibit 18.

"Answer of the Republic Mining and Manufacturing Company was marked Government's Exhibit 19.

[fol. 508] "Answer of Ocean Dominion Steamship Corporation was marked Government's Exhibit 20.

"Answer of Massena Securities Corporation was marked Government's Exhibit 21.

"Answer of Louisiana Terminal Company was marked Government's Exhibit 22.

"Answer of Knoxville Power Company was marked Government's Exhibit 23.

"Answer of Cedars Rapids Transmission Company, Limited, was marked Government's Exhibit 24.

"Answer of Alton and Southern Railroad was marked Government's Exhibit 25.

"Answer of Aluminum Seal Company was marked Government's Exhibit 26.

"Answer of Bauxite and Northern Railway Company was marked Government's Exhibit 27.

"Answer of Alcoa Power Company, Limited, was marked Government's Exhibit 28.

"Answer of Aluminum Ore Company was marked Government's Exhibit 29.

"Answer of The Aluminum Cooking Utensil Company was marked Government's Exhibit 30.

"Answer of J. R. D. Huston was marked Government's Exhibit 31.

"Answer of George R. Gibbons was marked Government's Exhibit 32.

[fol. 509] "Answer of C. B. Fox was marked Government's Exhibit 33.

"Answer of J. J. Demskie was marked Government's Exhibit 34.

"Answer of Roy A. Hunt was marked Government's Exhibit 35.

"Answer of Safford K. Colby was marked Government's Exhibit 36.

"Answer of George H. Clapp was marked Government's Exhibit 37.

"Answer of Robert E. Withers was marked Government's Exhibit 38.

"Answer of Arthur V. Davis was marked Government's Exhibit 39.

"Answer of C. L. Lycette was marked Government's Exhibit 40.

"Answer of George J. Stanley was marked Government's Exhibit 41.

"Answer of Paul J. Urquhart was marked Government's Exhibit 42.

"Answer of Irving W. Wilson was marked Government's Exhibit 43.

"Answer of Carolina Aluminum Company was marked Government's Exhibit 44.

"Answer of Nantahala Power and Light Company was marked Government's Exhibit 45."

The aforementioned exhibits numbered 1 to 45, both inclusive, are included as part of this statement of evidence to the following extent: Exhibit No. 1, being the answer of [fol. 510] Aluminum Company of America is attached; Exhibit No. 14, being the answer of The United States Aluminum Company is attached; but exhibits numbered 15 to 30, both inclusive, and exhibits numbered 44 and 45 are not attached, the same being identical with Exhibit No. 14. Exhibit No. 31, being the answer of J. R. D. Huston, is attached, but exhibits numbered 32 to 43, both inclusive, are not attached, inasmuch as they are identical with Exhibit No. 31. Exhibits numbered 2 to 13, both inclusive, are not attached, they being in all instances less comprehensive than Exhibit No. 1, the answer of Aluminum Company of America, which is attached.

CHARLES E. HUGHES, JR., called as a witness on behalf of the petitioner, testified as follows:

Direct examination.

I reside in New York City. I am a practicing lawyer. I have been practicing since 1913. I have been employed by the Aluminum Company of America in a capacity with respect to this New York suit.

Q. Will you please tell the Court when you were employed and in what capacity?

A. I was employed on May 12th in the capacity, if I may state the substance of it, to give consideration——

"Mr. Jackson: I think I will object at this time to testimony of this character upon the ground that it is irrelevant. I do not care to interrogate counsel as to his rela-

tions with a client, or clients, as to their relations with [fol. 511] counsel. It is ordinarily privileged. Of course, they waived the privilege. However, the point of the objection is that it is immaterial. The fact that a company has the inconvenience of employing counsel and the inconvenience of defending itself is no reason why we cannot sue them in New York.

"This is not a motion for change of venue for convenience of witnesses, this is purely the matter of showing that they will have to defend themselves, and I expect they will, I will be disappointed if they do not, and it seems to me it is entirely irrelevant when Mr. Hughes was employed or the extent of his prospective service, or other features between counsel and client.

"Mr. Smith: May I say a word in reply to that objection? If the Court please, we have just heard an offer a moment ago where they said that in Pittsburgh we contended we would have to employ New York counsel unless protected by the injunction, and we got the injunction and we immediately proceeded to employ New York counsel, and we desire to show you what the fact is as to that employment.

Judge Davis: Well, of course, you will have to employ New York counsel if you are sued there——

"Mr. Smith: Yes, sir.

"Judge Davis: —but what is the purpose of all this, Mr. Smith?

"Mr. Smith: The purpose——

"Judge Davis: Because if you are going along this line we will be here all week.

"Mr. Smith: Oh, I think this is our last witness, sir. We [fol. 512] offer to prove by this witness that he has never been employed generally in this case, that his employment was for the purpose of preserving the status quo in New York pending the final determination of this injunction proceeding which is here today before Your Honors and any appeal therefrom, and we think that we have the right to show that, to show that our statements in Pittsburgh were made in good faith to the Court, and that all that Mr. Hughes has been employed to do up to the present time is merely to preserve the status quo.

"Judge Davis: Well, just ask him that question, let's not go off on irrelevant matters, just ask him that question.

"Mr. Smith: I will do whatever Your Honor says:

"Judge Davis: All right.

"Mr. Smith: I thought it was not irrelevant to show the date of his employment was after this hearing in Pittsburgh. The hearing in Pittsburgh was on the 7th of May, when Mr. Gibbons testified. He testified that we had not employed counsel.

"Judge Davis: Just answer that question. We will temporarily overrule the objection.

"Mr. Smith: Very well, Your Honor."

The testimony of the witness was resumed as follows:

The extent of your employment to represent the Aluminum Company of America in that New York suit was this: Mr. William Watson Smith spoke to me on the long distance telephone on May 12th, which was the day of my employment. He stated, as I recall it, that my employment was limited to considering and advising with him concerning steps that might be taken to preserve the status quo [fol. 513] in New York during the pendency of these injunction proceedings in the Western District of Pennsylvania, and up to the present time that status of employment has not changed.

The witness testified on cross-examination as follows:

I or my firm have represented the Aluminum Company of America in previous litigations to a certain extent. The client was not a stranger to me. I did not intend to give that impression.

This concluded the examination and cross-examination of the witness.

COLLOQUY

"Mr. Smith: This is the last bit of evidence we have to offer, if the Court please.

"Judge Davis: All right, Mr. Smith.

"Mr. Smith: I do not want to be tiresome.

"Would you please mark this as Aluminum Company's Exhibit 1, this bunch of papers?

(Copies of the following letters were marked Aluminum Company Exhibit 1:)

Copy of letter dated May 25, 1937 from A. L. Nash to Mr. William Watson Smith. Copy of letter dated May 26,

1937 from William Watson Smith to Mr. Robert H. Jackson. Copy of letter dated May 26, 1937 from William Watson Smith to Mr. A. L. Nash. Copy of letter dated May 28, [fol. 514] 1937, from Robert H. Jackson to William Watson Smith. Copy of letter dated June 1, 1937, from William Watson Smith to Mr. Robert H. Jackson. Copy of letter dated June 4, 1937 from Robert H. Jackson to William Watson Smith. Copy of letter dated June 17, 1937 from William Watson Smith to Mr. Robert H. Jackson. Copy of letter dated June 19, 1937 from Robert H. Jackson to William Watson Smith.

There was introduced in evidence as Aluminum Company's Exhibit 1, copies of the letters hereinbefore identified and said exhibit is attached to this statement of evidence.

"Mr. Smith: I understand that counsel for the Government do not object to the use of the copies instead of the originals, but that they reserve all objections as to the relevancy of the offer.

"These letters, which I shall not read at length unless you wish, refer to certain negotiations which I personally conducted with Mr. Jackson, he representing the Government and I the Aluminum Company, with respect to the filing of these answers which have been offered in evidence in this case, I endeavoring on behalf of the company to get an extension of time or a stipulation that we need not file all of these answers pending the decision in this case, and Mr. Jackson agreed finally that we could have until the [fol. 515] 17th day of this month (June), that was last Thursday, for filing these answers, and we did file them on that date only under compulsion, because we had no other alternative.

"Mr. Jackson: I do not object to the letters in so far as they throw light on the filing of the answer in New York. I do object to them if their purpose is to raise any question as to the Government's filing the expediting certificate and declining to participate in further proceedings before Judge Gibson.

"Now, that is a subject that I would rather not discuss, and it is a subject that I would have to discuss if these were received for that purpose. I think that our right to file the expediting certificate is an absolute one and that we are not called upon to explain to adverse counsel why we exercise it.

The reasons, which were ample in our minds, I think are not open to review by our adversaries, and I ask that they be excluded so far as that ground is concerned. As an explanation of why they have filed in New York I have no objection to it, provided they will also stipulate that they made no application to the Court at any time for an extension of time in New York.

"Mr. Smith: We so stipulate.

"Mr. Jackson: Well, then, we understand that they are not admitted for the purpose of bearing on the purpose of the expediting certificate.

"Mr. Smith: Only indirectly; I think that the letters giving the reason why we filed these answers, because we were compelled to do so, the principal bearing of that is on [fol. 516] the question of whether we are entitled to a final decree here; I have no thought at all of investigating or even discussing or intimating anything as to why the expediting certificate was filed. I have no such thought in my mind, never have had.

"Mr. Jackson: Well, you spoke of the offer to cooperate and going before Judge Gibson for a final decree. That is what led me to believe that you were drawing some inference that we had unreasonably acted in not going again before Judge Gibson, and I just do not want to go into it unless it is necessary, but I don't want——

"Judge Davis: Then, Mr. Jackson, as I understand it, with those restrictions and with that statement of Mr. Smith there is no objection to receiving them under that limited——

"Mr. Jackson: That is right.

"Judge Davis: — purpose for which they may be used. All right, they will be admitted under those restrictions.

"Mr. Smith: Aluminum Company of America rests.

"Mr. Jackson: We rest.

"Judge Davis: You rest?

"Mr. Jackson: We have no evidence to offer.

"Judge Biggs: Before we adjourn, gentlemen, you have offered, Mr. Smith, certain parts of the New York petition in evidence——

"Mr. Smith: Certain parts of the Pennsylvania petition.

"Judge Biggs. Pardon me, certain parts of the Pennsylvania petition.

"Mr. Smith: Yes, Your Honor.

[fol. 517] "Judge Biggs: I am not clear as to the evidence which this Court has before it. It has, of course, before it, for instance, all of the evidence which Judge Gibson had before him, and was not this one of the matters which was before Judge Gibson, the petition, the 1912 petition?

"Mr. Smith: Oh, yes.

"Judge Biggs: You offered that simply for the purpose of pointing out particular paragraph to this Court?

"Mr. Smith: I offered only the parts of this that were either admitted or not denied, and those were some of the things that we had to prove before Judge Gibson because there was no answer filed at that time.

"Judge Biggs: But they were proved before Judge Gibson.

"Mr. Smith: Oh, yes, I think so, and while I believe that technically, as I view this case, this is just an ordinary case for an injunction, where we have to prove our case on final hearing, the only bearing of the preliminary injunction is that that was granted for the purpose of preserving the status quo until we got here, but if you wish any of the testimony before Judge Gibson, while I suppose it is not technically here, we now stipulate that it may be considered.

"Judge Biggs: Well, my thought was this, I assume, of course, that the hearing before Judge Gibson was in the nature of a hearing with respect to a preliminary injunction.

"Mr. Smith: It was.

"Judge Biggs: Now, your position here is that this is a final hearing——

"Mr. Smith: Yes, sir.

[fol. 518] "Judge Biggs: —in respect to that injunction.

"Mr. Smith: Yes, sir.

"Judge Biggs: Now, certain testimony was before Judge Gibson.

"Mr. Smith: Yes, sir.

"Judge Biggs: And you have no objection to that being considered by this Court.

"Mr. Smith: No.

"Judge Biggs: Have you, Mr. Jackson?

"Mr. Smith: Not the slightest objection.

"Mr. Jackson: I don't think that it is technically here. As I understand the practice, the findings made on preliminary injunction only go to the effect of the desirability of maintaining the status quo. It is a different question before the Court on preliminary injunction, and the findings

made on that are not binding in the final disposition of the case.

"Judge Biggs: I believe that is quite true, Mr. Smith——

"Mr. Jackson: I have no objection to the record being entirely before the Court except that I would not want to be bound by the findings made.

"Mr. Smith: Oh, I don't think you are, I think it would be the duty of this Court to make new findings, and, in fact, we are going to present requests for findings.

"Judge Biggs: I am referring particularly to this 1912 petition of which you offered part.

[fol. 519] "Mr. Jackson: No, that is all before you.

"Judge Biggs: That is what I am trying to get plain. I understood that you offered simply particular portions of that in evidence. As a matter of fact, that entire petition is before us, is it not?

"Mr. Smith: It is before you but it is not evidence.

"Judge Biggs: You have offered simply, you have offered simply the portions of the 1912 petition——

"Mr. Smith: I think I did not make it very clear to Your Honor. I think I can straighten this out.

"Judge Biggs: Would you?

"Mr. Smith: Yes, sir. We offered in evidence here all of the 1912 proceeding, that is, this far, consisting of the petition filed by the United States in 1912, the Aluminum Company's answer, the consent decree, the petition to modify the consent decree, and the supplemental decree. That is all before you.

"Judge Biggs: Now you come to the petition of April 29, 1937.

"Mr. Smith: Which has to do with the case we are trying this morning.

"Judge Biggs: You have offered simply portions of that 1937 petition.

"Mr. Smith: Because I could not do otherwise.

"Judge Biggs: Because you are offering only the parts in which you are in agreement.

"Mr. Smith: Where we are not contradicted.

"Judge Biggs: Where you are not contradicted.

[fol. 520] "Mr. Smith: We have no right to put that in as evidence except where it is admitted. I haven't any answer —Your Honor, we would be glad to have you have the whole thing before you.

"Judge Biggs: I understand now.

"Mr. Smith: Technically I haven't the right to offer it.

"Mr. Jackson: It is before them as a pleading.

"Mr. Smith: Absolutely.

"Mr. Jackson: It is before them as a pleading.

"Judge Biggs: But only the portions you have marked out and designated are before us——

"Mr. Smith: As evidence.

"Judge Biggs: —as evidence.

"Mr. Smith: That is right, Your Honor.

"Judge Biggs: Mr. Smith and Mr. Jackson, we want to be entirely clear, first, in respect to the questions of pleading, and secondly in respect to the questions of evidence: You have put in evidence certain portions of the New York suit. You, Mr. Jackson, of course, have offered no evidence at all, I assume on account of your preservation of your special appearance.

"Mr. Jackson: No, that is not the reason.

"Judge Biggs: Well, you have offered none, whatever the reason may be. Do I understand that it is your position, Mr. Smith, that we can consider as proven only those portions of the New York suit which you have put in evidence?

"Mr. Smith: Your Honor, I offered in evidence the entire petition in the New York suit but only for the purpose of showing the bringing of the suit and the nature of it and [fol. 521] the time it was brought and the time the subpœna was issued. I reserved that particularly because I would not want to be bound by the truth of what is stated in that suit. That is not in issue here at all.

"Judge Biggs: That is not in issue here at all.

"Mr. Smith: No, sir.

"Judge Biggs: In other words, one of the issues before us is to determine whether or not the same issues are presented——

"Mr. Smith: Yes.

"Judge Biggs: —in the New York suit as are presented in the Pittsburgh suit?

"Mr. Smith: That is the whole case.

"Judge Biggs: That is the whole case.

"Mr. Smith: I think so.

"Judge Biggs: And, of course, we therefore assume, or we must assume that you would lose in respect to your position if we found the New York suit presented different elements than the Pittsburgh suit.

"Mr. Smith: Yes, sir, necessarily, if there is anything that is substantial, any substantial difference.

"Judge Biggs: Then why do you offer portions of the New York suit in evidence?

"Mr. Smith: I did not, Your Honor.

"Judge Biggs: I so understood that you did.

"Mr. Smith: No, what I offered in evidence was portions of our petition on which we got the injunction, the petition we filed here a couple weeks ago, three or four weeks ago, [fol. 522] on which we got the injunction. I offered in evidence parts of that which were not denied by the United States in the answer they filed to our recent petition. I only offered the parts not denied because I could not offer any more, but I offered the entire petition in the New York suit so as to show the identity.

"Judge Biggs: Your petition, however, to the District Court for the Western District of Pennsylvania simply sets up certain matters which can be found, according to your position, either in the 1912 suit or in the New York suit.

"Mr. Smith: Yes, sir.

"Judge Biggs: And you offered particular portions of your petition to the Western District of Pennsylvania as a matter of proof.

"Mr. Smith: Yes, sir.

"Judge Biggs: But I do not quite see how that has any probative force.

"Mr. Jackson: Let me see if I can explain. The Pennsylvania practice was always confusing to me, and I think it is so customary to Mr. Smith that he doesn't, it at least took me a long time to see why he should follow the practice he does, because in most of the practice I am familiar with the pleading would always be before the Court and the Court itself would take the pleading and the answer and say, 'These things are not in issue.' Now, in his practice instead of handing up the pleadings and saying these things are admitted, he proves the undenied part of the petition. [fol. 523] "Mr. Smith: As an admission.

"Mr. Jackson: Yes, proving an admission.

"Judge Biggs: Oh, I see.

"Mr. Jackson: In other words, the things which he read from his pleading are things which we have not denied or have specifically admitted, and, therefore, are admissions against us.

"Judge Biggs: I see, they are simply admissions against interest.

"Mr. Jackson: He proves them in the record instead of passing them up to the Court.

"Judge Biggs: I see.

"Mr. Smith: You see, Your Honor, we said, and this is the whole gravamen of the case, that the issues and subject matter in these two suits are the same, and in order to show that we attach to the Pennsylvania petition a full copy of the New York petition. We offered it for the purpose of showing the character of it, but we do not say the averments in the petition are true. Of course, we would not say that.

"Judge Biggs: No, I appreciate that.

"Mr. Smith: Simply as showing the nature of that suit.

"Now, if Your Honor please, there is one small fact that I forgot to prove this morning that is conceded by the other side, and if you do not object I would like to put that on the record before the note of the closing. It is this fact—you gentlemen, I think, want it as well as we want it. In the written objections that Aluminum Company of America filed here this morning this statement is made:

[fol. 524] 'On June 14, 1937, Walter L. Rice, Special Assistant to the Attorney General, in presenting to the Judges of the United States Circuit Court of Appeals for the Third Circuit, the oral motion of the Attorney General for the appointment of a special expediting court stated to the Judges that Government counsel wished to still preserve their special appearance entered in the United States District Court for the Western District of Pennsylvania.'

I may say that it is conceded by counsel for the Government here present that that statement which I have just read is true. The Clerk's minutes also show it, but I should have put that in before.

Counsel for the Aluminum Company presented to the Court certain requests for findings of fact and conclusions of law, following which the hearing was concluded.

[fol. 525] The foregoing is all the evidence introduced at the trial of the said cause and all proceedings had in the trial thereof.

Wherefore Aluminum Company of America, petitioner and appellant, prays that the above statement of evidence

be settled, approved and allowed by the Court as a true, full and correct and complete statement of all the evidence taken and given on the trial of said cause for use on the appeal taken to the Supreme Court of the United States.

Dated July 27, 1937.

William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Solicitors for Aluminum Company of America.

The foregoing statement of testimony is acceptable to appellees and the lodgment thereof in the Clerk's office for the examination of the appellees and notice of such lodgment and of the time when the same will be presented to the court for approval are hereby waived, and the same may be approved by the court at once.

Walter L. Rice, Special Assistant to the Attorney General as Counsel for United States of America; Homer S. Cummings, Attorney General; Robert H. Jackson, Assistant Attorney General; Walter L. Rice, Special Assistant to the Attorney General; John W. Aiken, Special Assistant to the Attorney General; Wendell Berge, Special Assistant to the Attorney General; F. Gwyn Harper, Jr., Special Attorney; N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney.

[fol. 525a] ORDER APPROVING STATEMENT OF EVIDENCE

On this 27th day of July, 1937, the foregoing statement, having been presented in open court by the appellant, with the consent of the appellees, the same is hereby approved and ordered filed as a "Statement of the Evidence" to be included in the record on appeal in the above entitled case, as provided in Equity Rule 75-b.

J. Whitaker Thompson, Circuit Judge.

[fol. 526] PETITIONER'S EXHIBIT No. 1

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Equity No. 85-73

UNITED STATES OF AMERICA, Petitioner,

v.

ALUMINUM COMPANY OF AMERICA et al., Defendants

Equity Subpœna

The President of the United States of America to Aluminum Company of America, Aluminium Limited, The Aluminum Cooking Utensil Company, Aluminum Goods Manufacturing Company, Aluminum Manufactures, Incorporated, Aluminum Ore Company, Aluminum Seal Company, Alcoa Power Company, Limited, Alton and Southern Railroad, Bauxite and Northern Railway Company, Carolina Aluminum Company, Cedar Rapids Transmission Company, Limited, Franklin Fluorspar Company, Knoxville Power Company, Louisiana Terminal Company, Massena Securities Corporation, The Massena Terminal Railroad Company, Nantahala Power and Light Company, Ocean Dominion Steamship Corporation, The Republic Mining and Manufacturing Company, The St. Lawrence River Power Company, St. Louis and Ohio River Railroad, Surinaamsche Bauxite Maatschappij, The United States Aluminum Company, The Coalesced Company, The Aloxite Corporation, J. H. Alger, George G. Allen, Earl Blough, L. Braasch, Ailsa Mellon Bruce, David K. E. Bruce, George H. Clapp, Safford K. Colby, André Henry Coüannïer, Arthur V. Davis, Edward K. Davis, J. J. [fol. 527] Demskie, M. B. de Sousa, F. L. Farrell, Edwin S. Fickes, C. B. Fox, Aimé Geoffrion, George R. Gibbons, Roy A. Hunt, J. R. D. Huston, Alvah K. Lawrie, C. L. Lycette, Leighton McCarthy, Andrew W. Mellon, Paul Mellon, Richard K. Mellon, Union Trust Company of Pittsburgh, Richard K. Mellon, Jennie King Mellon, and Sarah Mellon Scaife as Executors of the Estate of R. B. Mellon, Deceased; G. O. Morgan, Jr., Charles H. Moritz, Winthrop C. Neilson, Sarah Mellon Scaife, George J. Stanley, W. C. Terry, Paul J. Urquhart, J. F. Van Lane, Irving W. Wilson, Robert E. Withers, Greeting:

You are Hereby Commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by the United States of America, and to further do and receive what the said Court shall have considered in this behalf. And this you are not to omit under the penalty on you and each of you of Two Hundred and Fifty Dollars ($250).

Witness, Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 27th day of April, in the year One Thousand Nine Hundred and Thirty-seven, and of the Independence of the United States the One Hundred and Sixty-one.

Charles Weiser, Clerk,

Walter L. Rice, Special Assistant to the Attorney General, Solicitor for the Petitioner, Department of Justice, Washington, D. C.

New York Address: % U. S. Attorney, U. S. Court House, New York City.

The Defendants are required to file their answer or other defense in the above cause in the Clerk's Office on or before the Twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken Pro Confesso.

Charles Weiser, Clerk.

[fol. 528] PETITIONERS' EXHIBIT No. 2

Chancery Subpœna

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

The United States of America, to Aluminum Company of America a Corporation and Citizen of the state of Pennsylvania, Greeting:

We command you and every one of you, that you appear before our Judges of our District Court of the United States of America, for the Western District of Pennsylvania, at

the city of Pittsburgh, in said District, on the First Monday of July next, to answer the bill of complaint of United States of America for alleged violation of Act of Congress passed July 2, 1890, intitled An Act to protect trade and Commerce against unlawful restraints and Monopolies filed in the Clerk's Office of said Court, in the city of Pittsburgh, then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default. And this you are in no wise to omit, under such penalties as are inflicted by the laws of the United States.

Witness, the Honorable, the Judges of the District Court of the United States, for the Western District of Pennsylvania, Pittsburgh, this 16 day of May A. D. 1912, and in the 136 year of the Independence of the said United States.

W. T. Lindsey, Clerk.

Memorandum

The above-named defendant is required to enter an appearance in the above-entitled cause on or before the first Monday of the month ensuing twenty days after the service of this writ, otherwise the complaint may be taken against it as confessed, and a decree entered accordingly.

Wm. T. Lindsey, Clerk.

Endorsements: No. 159. En. Equity. Term, 1912. District Court of The United States, Western District of Pennsylvania. United States of America vs. Aluminum Company of America. Chancery Subpoena. A true copy issued May 16/12. Attest: E. Hadsell Porter, U. S. Marshal, by W. G. Dick, Deputy U. S. Marshal. Geo. W. Wickersham, Atty. General. James A. Fowler, Asst. to Atty. General. William T. Chantland, Special Asst. to Atty. General. John H. Jordan, United States Attorney.

[fol. 529] GOVERNMENT EXHIBIT 1

[fol. 530] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Equity No. 85—73

UNITED STATES OF AMERICA

v.

ALUMINUM COMPANY OF AMERICA et al

ANSWER OF ALUMINUM COMPANY OF AMERICA

To the Honorable the Judges of said Court:

Aluminum Company of America, defendant above named (hereinafter called "Aluminum Company"), answering the petition of United States of America, petitioner (hereinafter called "petitioner"), for answer to said petition says:

The petition refers to many business transactions of Aluminum Company during its fifty years of existence. In not a single instance does the petition credit Aluminum Company with legitimate motives. On the contrary petitioner attributes a sinister purpose to every transaction and, with respect thereto, charges Aluminum Company with having unlawfully monopolized and restrained trade and commerce or having attempted so to do. The facts are hereinafter set forth, each paragraph of this answer bearing the same number as the paragraph of the petition which it answers.

[fol. 531] 1. None of the defendants, either jointly or severally, have violated the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. The denials in this paragraph, in so far as the same relate to five contracts of Aluminum Company or a subsidiary made many years ago, are subject to the averments contained in paragraphs 56, 86, 87, 88 and 90 of this answer.

2. There has been no unlawful monopoly or attempt to monopolize or combination or conspiracy to monopolize or any contract or combination or conspiracy to restrain trade or commerce on the part of any of the defendants within

the Southern District of New York or elsewhere nor have any of the defendants or their representatives performed any unlawful acts as charged in the petition either in said District or elsewhere. The denials in this paragraph, in so far as the same relate to five contracts of Aluminum Company or a subsidiary made many years ago, are subject to the averments contained in paragraphs 56, 86, 87, 88 and 90 of this answer.

3. The only office in New York City maintained by Aluminum Company is a sales office in the New York Central Building. Aluminum Company admits the remaining averments of this paragraph.

4. Aluminum Company is without knowledge of whether or not Aluminium Limited has an office in the British Empire Building, New York City, although it avers that Aluminium Limited has certain space in said building. Aluminum Company denies that Aluminium Limited has an office [fol. 532] in the Koppers Building, Pittsburgh. Aluminum Company admits the remaining averments of this paragraph.

5. Aluminum Company admits the averments of this paragraph.

6. Aluminum Company denies that in 1909 Aluminum Goods Manufacturing Company was engaged in the manufacture or sale of aluminum cooking utensils. That company did not engage in that business until several years after 1909. In 1909 Aluminum Goods Manufacturing Company was engaged in the manufacture and sale of certain fabricated aluminum products in interstate commerce but, if at that time said company in selling said fabricated products came into competition with The Aluminum Cooking Utensil Company, such competition was negligible and Aluminum Company is without knowledge whether or not such competition in said aluminum fabricated products in point of fact existed. Except as stated above, Aluminum Company admits the averments of this paragraph.

7. The correct corporate name of the defendant, Aluminum Manufactures, Incorporated, is Aluminum Manufactures, Inc., a corporation organized in 1919 under the laws of the State of Delaware. Aluminum Company denies that Aluminum Manufactures, Inc., carries on business at

Buffalo, New York, Cleveland, Ohio, Detroit, Michigan, Fairfield, Connecticut, or elsewhere, and avers that upon making the lease to Aluminum Company, hereinafter mentioned, Aluminum Manufactures, Inc. retired from business and reduced its activities to the [fol. 533] mere ownership and holding of property and doing only the acts necessary to the maintenance of its corporate existence and the management of its internal affairs. Aluminum Company denies that in 1919 Aluminum Manufactures, Inc. acquired the properties and business of The Aluminum Casting Company and denies that the latter company had been organized to consolidate a number of independent castings companies with Aluminum Company's foundry. The fact is that in 1919 Aluminum Manufactures, Inc., acquired all of the capital stock of The Aluminum Casting Company, a corporation organized in 1909 under the laws of the State of Ohio, which upon organization had taken over the foundries of six aluminum castings companies including the New Kensington aluminum castings foundry of The United States Aluminum Company. At the close of the year 1920 substantially all of the property and assets of The Aluminum Casting Company were distributed to Aluminum Manufactures, Inc., as sole stockholder thereof. The lease referred to in this paragraph was made for 25 years instead of 24 years. Aluminum Company formerly held 100% of the capital stock of Aluminum Die Casting Corporation and Aluminum Screw Machine Products Company but Aluminum Die Casting Corporation was dissolved in 1928 and Aluminum Screw Machine Products Company was dissolved in 1933. Aluminum Company admits the remaining averments of this paragraph except that it denies that it is the largest producer in the United States of aluminum sand castings or aluminum die castings. Further answering this paragraph Aluminum Company says: The production of alu- [fol. 534] minum sand castings and aluminum die castings by Aluminum Company has been made possible not so much by the aforementioned lease and acquisitions as by the expenditure of large sums of money on plants and facilities since the date of such acquisitions. The lease of the properties of Aluminum Manufactures, Inc., and the acquisition of the stock interests in Aluminum Die Casting Corporation and Aluminum Screw Machine Products Company were thoroughly investigated at the time of acquisition by

the Department of Justice and no objection was made by the Department.

8. Aluminum Company denies that the principal office of Aluminum Ore Company is in the Gulf Building, Pittsburgh, but admits the remaining averments of the paragraph.

9. Aluminum Company admits the averments of this paragraph.

10. Aluminum Company denies that Alcoa Power Company, Limited, has offices in the Gulf Building, Pittsburgh, but admits the remaining averments of the paragraph.

11. Aluminum Company denies that The Alton and Southern Railroad has offices in the Gulf Building, Pittsburgh. In addition to transporting raw material and finished products to and from the refinery of Aluminum Ore Company at East St. Louis, Illinois, The Alton and Southern Railroad is a common carrier and transports a much larger amount of freight for others. Except as hereinbefore denied and as modified by the preceding statements, [fol. 535] Aluminum Company admits the averments of this paragraph.

12. Aluminum Company denies that The Bauxite and Northern Railway Company has its principal office in the Gulf Building, Pittsburgh. In addition to transporting bauxite as a wholly owned subsidiary of Aluminum Company, The Bauxite and Northern Railway Company is a common carrier and transports a considerable amount of other freight. Except as hereinbefore denied and as modified by the preceding statements, Aluminum Company admits the averments of this paragraph.

13. Carolina Aluminum Company was organized in 1905 and not in 1906 as averred in the petition. While in 1915 Aluminum Company purchased the properties of Southern Aluminum Company, the latter company never produced any aluminum in the United States and its projected plant was not half completed and was abandoned by reason of the World War. The purchase by Aluminum Company was contingent upon the approval of the Department of Justice and such approval was obtained on September 3, 1915. Carolina Aluminum Company carries on business only as a department of Aluminum Company. Aluminum

Company denies that Carolina Aluminum Company has its principal office in the Gulf Building, Pittsburgh. Except as hereinbefore denied and as modified by the preceding statements, Aluminum Company admits the averments of this paragraph.

14. The correct corporate name of the defendant, Cedar [fol. 536] Rapids Transmission Company, Limited, is Cedars Rapids Transmission Company, Limited, and the said corporation has offices at Cornwall, Canada, and not at Toronto nor in the Gulf Building, Pittsburgh, as alleged in the petition. Except as modified by the preceding statements, Aluminum Company admits the averments of this paragraph.

15. Franklin Fluorspar Company was a corporation organized in 1924 under the laws of the State of Delaware and from that time until its dissolution owned and operated fluorspar mines in Illinois and Kentucky as a wholly owned subsidiary of the Aluminum Company although, beginning in 1932, all of its capital stock was owned by Aluminum Ore Company which, in turn, was a wholly owned subsidiary of Aluminum Company. Franklin Fluorspar Company was dissolved in 1935 and its properties were turned over to Aluminum Ore Company which since has operated the same. Fluorspar produced by said mines is not a chemical solvent but is used by Aluminum Company in the production of aluminum and for other purposes and is likewise used by steel companies and other manufacturers. Except as stated above, Aluminum Company denies each and every averment contained in this paragraph.

16. Knoxville Power Company is a corporation organized in 1900 under the laws of the State of Tennessee and, beginning in 1910, for a considerable time thereafter engaged as a wholly owned subsidiary of Aluminum Company in supplying electric energy to the aluminum producing plant and the rolling mill of Aluminum Company at Alcoa, [fol. 537] Tennessee, and to the public. At present it supplies no electric energy to the said plant or rolling mill but does supply the same to the public. It has no office in the Gulf Building, Pittsburgh. Except as stated above, Aluminum Company denies each and every averment contained in this paragraph.

17. Louisiana Terminal Company has no office in the Gulf Building, Pittsburgh. Except as modified by the preceding statement, Aluminum Company admits the averments of this paragraph.

18. Massena Securities Corporation has no office in the Gulf Building, Pittsburgh. Except as modified by the preceding statement, Aluminum Company admits the averments of this paragraph.

19. Massena Terminal Railroad Company has no office in the Gulf Building, Pittsburgh. It is a common carrier and transports freight for others than Aluminum Company. Except as modified by the preceding statement, Aluminum Company admits the averments of this paragraph.

20. Aluminum Company admits the averments of this paragraph.

21. Aluminum Company admits the averments of this paragraph but avers that, in addition to the freight therein mentioned, Ocean Dominion Steamship Corporation is a common carrier and transports a large amount of freight for others than Aluminum Company and, in addition thereto, carries passengers.

22. It is true that The Republic Mining and Manufacturing Company is a corporation organized in 1929 under [fol. 538] the laws of the State of Delaware as a successor of American Bauxite Company incorporated under the laws of the State of Pennsylvania in 1909 and also of Republic Mining and Manufacturing Company incorporated under the laws of the State of Georgia in 1882. Said American Bauxite Company held and operated bauxite mines in Arkansas as a wholly owned subsidiary of Aluminum Company and said The Republic Mining and Manufacturing Company held and operated bauxite lands in Arkansas, Georgia, and Alabama as a wholly owned subsidiary of Aluminum Company until the properties of said two companies were taken over by The Republic Mining and Manufacturing Company in 1929. The Republic Mining and Manufacturing Company, since its incorporation in 1929, has operated as a wholly owned subsidiary of Aluminum Company. The Republic Mining and Manufacturing Company has an office in New York City, but its principal office is in Wilmington, Delaware. Except as stated above,

Aluminum Company denies each and every averment contained in this paragraph.

23. The St. Lawrence River Power Company has no office in the Gulf Building, Pittsburgh. Except as modified by the preceding statement, Aluminum Company admits the averments of this paragraph.

24. Defendant, St. Louis and Ohio River Railroad, is a corporation organized in 1920 under the laws of the State of Illinois and since then has engaged as a wholly owned subsidiary of Aluminum Company in transporting raw ma- [fol. 539] terials to, and alumina from, the refinery of Aluminum Ore Company at East St. Louis, Illinois. In addition it is a common carrier and transports a considerable amount of other freight. It has no office in the Gulf Building, Pittsburgh. Except as stated above, Aluminum Company denies each and every averment contained in this paragraph.

25. Aluminum Company admits the averments of this paragraph except that it denies that defendant, Surinaamsche Bauxite Maatschappij, has an office in the Gulf Building, Pittsburgh.

26. Aluminum Company denies that the various products, except castings, mentioned in this paragraph of the petition were or are manufactured at Fairfield, Connecticut. These various articles have been and are manufactured in various plants of Aluminum Company. The activities of The United States Aluminum Company at Fairfield, Connecticut, have been confined to manufacturing castings. Except as modified by the preceding statements, Aluminum Company admits the averments of this paragraph.

27. Aluminum Company admits the averments of this paragraph.

28. Aluminum Company admits the averments of this paragraph.

29. Aluminum Company admits the averments of this paragraph.

30. Aluminum Company admits the averments of this paragraph except that it avers that the individual defend- [fol. 540] ants named in this paragraph participate in the management of some but not all of the corporate defend-

ants and denies that any of the individual defendants named in this paragraph may be found in the New York Central Building, New York City, and further avers that as to any of the defendants named in this paragraph who are directors but not officers of Aluminum Company, their participation in the direction and management of Aluminum Company has been only to the extent to which such participation usually pertains to the office of a director.

31. Aluminum Company is without knowledge of any of the averments contained in this paragraph except that it believes that Edward K. Davis, Earl Blough, J. H. Alger, G. O. Morgan, Jr., and J. F. VanLane are either officers or directors of Aluminium Limited and have participated in its direction and management although Aluminum Company is without knowledge of the extent of such participation.

32. It is true that the individual defendant, Andrew W. Mellon, was a director of Aluminum Company from 1892 to 1921 and participated in its direction and management during that period of time to the extent to which such participation usually pertains to the office of a director. Aluminum Company denies that Andrew W. Mellon or Paul Mellon or Ailsa Mellon Bruce, individually or combined, has owned or now owns a large proportion of the stock of [fol. 541] Aluminum Company. It is true that Andrew W. Mellon, Paul Mellon and Ailsa Mellon Bruce own a substantial amount (but not all) of the capital stock of The Coalesced Company. Aluminum Company avers, that The Coalesced Company has a substantial holding of the capital stock of Aluminium Limited, but that it does not even approach control of that company. Aluminum Company denies that Andrew W. Mellon or Paul Mellon or Ailsa Mellon Bruce or The Coalesced Company has influenced or influences the policies or activities of Aluminum Company except that Andrew W. Mellon, during the period of his directorship, exercised upon the policies or activities of Aluminum Company such influence as is usually done by a director. Aluminum Company is without knowledge of how the policies or activities of Aluminium Limited are influenced except that Aluminum Company denies that Andrew W. Mellon or Paul Mellon or Ailsa Mellon Bruce or The Coalesced Company has influenced or influences such policies or activities. Said individual defendants may be found in Pittsburgh, Pennsylvania, in care of Mellon

National Bank. Except as stated above, Aluminum Company denies each and every averment contained in this paragraph.

33. It is true that defendants, The Union Trust Company of Pittsburgh, Richard K. Mellon, Jennie King Mellon and Sarah Mellon Scaife are executors of the will of R. B. Mellon, deceased, and have received letters testamentary issued to them by the Register of Wills of Allegheny County, Pennsylvania, December 8, 1933. Aluminum Company [fol. 542] denies that said executors in their official capacity or Richard K. Mellon or Sarah Mellon Scaife in their individual capacities, or said executors and individuals combined, have owned or held, or now own or hold, a large proportion of the capital stock of Aluminum Company. It is true that said executors in their official capacity and said Richard K. Mellon and Sarah Mellon Scaife own a substantial amount of the capital stock of The Aloxite Corporation, but they do not own or possess all of said capital stock. Aluminum Company avers, that The Aloxite Corporation has a substantial holding of the capital stock of Aluminium Limited but that it does not even approach control of that company. Aluminum Company denies that the executors of the will of R. B. Mellon, deceased, or Richard K. Mellon or Sarah Mellon Scaife or The Aloxite Corporation has influenced or now influences the policies or activities of Aluminum Company except that Richard K. Mellon as a director of Aluminum Company exercises such influence upon the policies or activities of that company as is usually done by a director. Aluminum Company is without knowledge of how the policies or activities of Aluminium Limited have been influenced or are now influenced but denies that the executors of the will of R. B. Mellon, deceased, or said Richard K. Mellon or said Sarah Mellon Scaife or said The Aloxite Corporation has influenced or now influences such policies or activities.

It is true that said individual defendants may be found in [fol. 543] care of the defendant, The Union Trust Company of Pittsburgh, in the City of Pittsburgh, Pennsylvania.

Except as stated above, Aluminum Company denies each and every averment contained in this paragraph.

34. Aluminum Company denies the averments of this paragraph. It is true that the individual defendant, Alvah K. Lawrie, was for many years and until 1933 a director of

Aluminum Company, and participated in the direction and management of said company to the extent to which a director of a corporation usually so participates. The said Alvah K. Lawrie died on December 24, 1936. Aluminum Company denies that the Estate of Alvah K. Lawrie owns a substantial amount of the capital stock of Aluminum Company or that he may be found at 930 Park Avenue, New York City. Aluminum Company is without knowledge of the stockholdings of the Estate of Alvah K. Lawrie in Aluminium Limited.

35. Aluminum Company admits that the individual defendant, Charles H. Moritz, was an officer of Aluminum Company and participated in its direction and management. Aluminum Company is without knowledge whether, after 1928, Charles H. Moritz was an officer or director of defendant Aluminium Limited or participated in its direction and management. Said Charles H. Moritz owns a substantial amount of the capital stock of Aluminum Company, but said company is without knowledge as to his stockholdings in Aluminium Limited or where he may be found.

[fol. 544] 36. The metal aluminum was isolated about the year 1827, but was never manufactured in commercial quantities, nor could it be manufactured at a cost that justified its use for commercial purposes, until the methods were invented which were adopted by Aluminum Company and put into actual use at its works. In or about the year 1886, Charles M. Hall made an invention of and applied for a patent on a process for the manufacture of aluminum by which he was able to produce aluminum by an improved method at a reasonable cost and in commercial quantities. A patent thereon was granted to Hall on April 2, 1889, and that patent was acquired by Aluminum Company. The Hall inventions and patents covered a novel method in that they contemplated the introduction into a bath made up of a double fluoride of aluminum, such as cryolite, of another compound of aluminum, namely alumina (oxide of aluminum), which it was discovered by Hall was highly soluble in a bath such as cryolite. Hall discovered that after the alumina was put into solution in the fused bath of cryolite the alumina would be preferentially acted upon by the electric current and that the aluminum contained in the alumina would be deposited before the electrolysis acted upon the cryolite bath itself. Thus the cryolite bath would

in a sense be a constant medium of solution. As to the method of fusing the bath consisting of a double fluoride of aluminum contemplated by his process, Hall's patent makes no mention.

Hall in his experiments used fire heat for the maintenance [fol. 545] of the fusion of the cryolite bath, but when commercial work was started by Aluminum Company under the Hall patents in Pittsburgh in 1888 and the size of the apparatus and the amount of electric current gradually increased as the business developed, it was found that the electricity necessarily used in the Hall process for electrolysis inevitably produced sufficient heat to maintain fusion and consequently Aluminum Company abandoned the use of fire for supplemental heat and used only electricity to fuse the bath. Neither Hall nor Aluminum Company thought that fusion by electricity was sufficiently novel to be patented since they conceived it to be a well-known principle.

In 1883 one Bradley applied for a patent covering, in general, fusion by electricity. The Bradley patent did not disclose a process for making aluminum but its claims merely covered what was later on contended by Aluminum Company and others to be a well-known and unpatentable fact, namely, that baths such as Hall used would be fused by electricity. Hall's patent disclosed a practicable and hitherto totally unknown method of making aluminum, while Bradley's patent merely covered a general principle, which Hall used in common with other electro-metallurgical manufacturers who eventually had to buy rights under the Bradley process as did Aluminum Company. The Bradley patent which was applied for before Hall's application, was not granted until three years after Hall's patent was issued and consequently Bradley was not only fortunate enough to get the courts to sustain what was contended to be a pat- [fol. 546] enting of a general principle, but was also fortunate enough to get a patent which due to its date of application was "prior" to Hall's patent but which outlived Hall's patent for three years.

The Cowles Electric Smelting & Aluminum Company of Lockport, N. Y., which later became the owners, as assignees, of the Bradley patents, manufactured aluminum for about two years, from 1891 to 1893. Aluminum Company filed a bill in equity against the Cowles Company for in-

fringement of the Hall patents, and it was found by the District Court of the United States for the Northern District of Ohio that the process used by that company did infringe the Hall patents and the Cowles Company was enjoined on or about January 23, 1893, from using the Hall patents and thereafter that company did not and could not make aluminum under said patents.

In May, 1897, the Cowles Company having obtained title to the Bradley patent brought suit against Aluminum Company claiming that the method of fusion used by Aluminum Company infringed the Bradley patent, and in 1903, the Circuit Court of Appeals for the Second Circuit decided that the method of fusion used by Aluminum Company did infringe the Bradley patents. Consequently it became necessary for Aluminum Company to pay heavy damages for past infringement and to acquire a license. On the 31st day of October, 1903, Aluminum Company and the Cowles Company entered into an agreement by which Aluminum Company agreed to pay the Cowles Company royalties for the use of the Bradley patents until the same expired, [fol. 547] which was in the year 1909. The Hall patents expired before that date, to-wit, in 1906. Since 1909 there have been no patents which covered the process used by Aluminum Company, and any one who desired to enter into the business has been free to use the process and inventions covered by the Hall and Bradley patents.

Except as stated above, Aluminum Company denies each and every averment contained in this paragraph.

37. Aluminum Company admits the averments of this paragraph except as follows: It is true that in the commercial production of aluminum by said electrolytic process large quantities of electric energy are required which, in many cases or localities, can be generated under favorable conditions more economically by water power than by steam but Aluminum Company avers that this is not true in all cases or localities.

38. Aluminum Company admits the averments of this paragraph except that it denies that aluminum has now become essential in either building construction or in the manufacture of refrigerators or radio apparatus or in the production of equipment used in rail or air or water transportation or in military or naval defense. It is useful for these purposes but not essential.

39. Aluminum Company denies the averments of this paragraph except that it admits that Aluminum Company and certain of its wholly owned subsidiaries are engaged, [fol. 548] and for many years past have been engaged, in interstate trade and commerce in bauxite, alumina, aluminum and products manufactured therefrom.

40. Aluminum Company denies that defendants or any of them have violated or are now violating the provisions of the Sherman Anti-Trust Act by monopolizing or attempting to monopolize or combining or conspiring to monopolize or contracting or combining or conspiring to restrain interstate or foreign trade or commerce or by enabling Aluminum Company to acquire or maintain any monopoly of bauxite or alumina or aluminum or products manufactured therefrom or by excluding others from the fair opportunity to engage in interstate or foreign trade or commerce in said articles or otherwise. The denials in this paragraph, in so far as the same relate to five contracts of Aluminum Company or its subsidiary made many years ago, are subject to the averments contained in paragraphs 56, 86, 87, 88 and 90 of this answer.

41. The amount of cash initially put into Aluminum Company in 1888 was $20,000. In the year 1889 the capital stock of the Company was increased to $1,000,000, the additional $980,000 of capital structure representing cash and patents (the Hall patents which turned out to be worth millions). Shortly thereafter the sum of $1,723,200 in cash was received from the sale of stock. In 1925 Aluminum Company acquired from the Duke interests, through the Canadian Manufacturing & Development Company, prop- [fol. 549] erty in exchange for $17,063,750 par value of capital stock. Also in 1925 the Company received cash from subscriptions and sales of stock in the amount of $1,051,875. In addition, the Company has had the use, from time to time, of large sums of borrowed capital, all of which has been employed in its business and has contributed largely to the making of such profits as the Company has enjoyed.

From the time of its incorporation to December 31, 1934, that is during approximately 46 years, the total cash dividends paid by Aluminum Company to its stockholders amounted to $86,237,743. This is an average annual return to the stockholders of slightly more than 3% upon the

average net assets invested in the Company's business. No cash dividends have been paid on the common stock since the year 1925 and the dividends on the preferred stock are in arrears.

Upon the organization of Aluminium Limited in 1928 Aluminum Company received the capital stock of Aluminium Limited in exchange for various foreign properties, or the stock or securities of various foreign companies, carried on the books of Aluminum Company on the basis of cost at $23,005,995. All of these shares of Aluminium Limited were immediately distributed by Aluminum Company pro rata among its stockholders.

As of December 31, 1934 the net worth of Aluminum Company, as shown by its annual report, was $169,505,514.55. The increase of approximately $150,000,000 in the net worth of the Company's assets during its 46 years of [fol. 550] operations ending December 31, 1934, over and above the amount paid in in cash and property by stockholders of the Company, includes not only the profits from its operations not paid out in dividends which were plowed back into the business, but also a considerable amount representing an increase in value of properties acquired and owned by Aluminum Company. From its beginning through December 31, 1934, Aluminum Company's earnings per annum on its average net assets have averaged slightly more than 9% and it has paid out in cash dividends slightly more than 3%, the balance of its net earnings being plowed back into the business. Since 1921 and through the year 1934 its earnings per annum on its average net assets have averaged 6⅔% and it has paid out in cash dividends approximately 3⅛%. Aluminum Company denies that its profits have been excessive and have resulted in a monopolization of the industry, but avers on the contrary that the profits on the money invested in its business have been relatively small.

Aluminum Company denies that its product is an article of prime necessity for which there is no available substitute. The fact is that there are available substitutes. It is true that there has been and probably will be an increasing demand for aluminum.

Except as stated above, Aluminum Company denies each and every averment of this paragraph.

42. Aluminum Company admits the averments of this paragraph except that its sales have not progressively in-
[fol. 551] creased with uniformity as there have been ups and downs as in all manufacturing businesses, but the general trend until 1929 has been upward.

43. Aluminum Company is without knowledge as to the per cent of the bauxite deposits in the United States commercially suitable for the production of aluminum which are owned or held by The Republic Mining and Manufacturing Company. The Republic Mining and Manufacturing Company has many competitors with large bauxite holdings in the United States who sell in the market. Bauxite is one of the widely distributed ores and exists in large quantities in many of the important countries of the world. It is true that Aluminum Company uses 100% of so much of the bauxite produced in the United States as is used in the manufacture of aluminum inasmuch as it is the only manufacturer of virgin aluminum in the United States. If the averment in this paragraph as to control means that Aluminum Company "controls" the bauxite which it so uses, the averment is true, otherwise it is untrue and is denied.

44. Inasmuch as Aluminum Company produces the only virgin aluminum produced in the United States, it is true that its 100% subsidiary, Aluminum Ore Company, produces at its plant in East St. Louis, Illinois, 100% of the alumina used in the United States in the production of such aluminum.

45. The averments of this paragraph are admitted with the qualification that defendant, Carolina Aluminum Com-
[fol. 552] pany, is merely an incorporated department of Aluminum Company's business.

46. Aluminum Company is without knowledge as to the per cent of the combined total of the virgin aluminum produced and imported and of the competitive secondary or scrap aluminum moving in interstate trade and commerce in the United States that it now owns or controls or has owned or controlled at any time. Aluminum Company believes that at the present time more than half of the imported virgin aluminum is imported by it, but avers that this proportion has varied considerably in past years and that this variation will probably continue. Aluminum Com-

pany denies that only a small portion of the available secondary aluminum is fully competitive with virgin aluminum. On the contrary, much the greater portion of the available secondary aluminum is fully competitive with virgin aluminum and practically all of it can be made so competitive by proper care and skill in handling secondary aluminum.

47. Aluminum Company is without knowledge as to the per cent of aluminum sheet moving in interstate trade and commerce in the United States which it produces or sells.

48. Aluminum Company is without knowledge as to the per cent of the alloys of aluminum commonly known as the hard alloys or duralumin, moving in interstate trade and commerce in the United States that it produces or sells.

49. Aluminum Company is without knowledge as to the per cent of any of the products mentioned in this para- [fol. 553] graph moving in interstate trade and commerce in the United States that it produces or sells, except that it believes that it does produce and sell virtually 100 per cent of the wire and cable for electrical transmission moving in interstate trade and commerce in the United States.

50. Aluminum Company is without knowledge whether or not it is the largest producer or seller of aluminum castings or aluminum foil or bronze powder moving in interstate trade and commerce in the United States.

51. Aluminum Company is without knowledge as to the per cent of the cooking utensils moving in interstate trade and commerce in the United States that it and Aluminum Cooking Utensil Company, wholly owned subsidiary of Aluminum Company, produce or sell. It is true that Aluminum Company owns 26 per cent of the capital stock of and is represented on the directorate of defendant Aluminum Goods Manufacturing Company, largest domestic manufacturer of aluminum cooking utensils, with the exception of defendant, Aluminum Cooking Utensil Company.

52. Aluminum Company is without knowledge as to the per cent of the aluminum pistons moving in interstate trade and commerce in the United States that it and the licensees under its patents manufacture and sell.

53. Aluminum Company denies that it has a 100% monopoly of the production and sale of alumina although it

does produce and sell all the alumina used for the pro-
[fol. 554] duction of aluminum in the United States and it does produce all the virgin aluminum manufactured in the United States. Aluminum Company denies that, by virtue of its production and sale of alumina and virgin aluminum or otherwise it has acquired or has maintained a monopolistic control of the production or sale of alumina or aluminum or aluminum sheet or alloy sheet or basic fabricated products or products manufactured therefrom sold in interstate or foreign commerce. Aluminum Company denies that it possesses the power to fix arbitrary or discriminatory or unreasonable prices or to fix any prices or to extend or perpetually maintain any monopolistic control or to exclude others who would, except for said alleged monopolistic control, engage in competition with Aluminum Company in the production or sale of bauxite or alumina or of virgin aluminum or aluminum products manufactured therefrom. Aluminum Company denies that new enterprises desiring to engage in the aluminum industry would be placed at its mercy and denies that it controls essential raw materials and denies that there is any hazard involved in venturing into any business referred to in this paragraph other than the normal hazards of any competitive manufacturing business, and Aluminum Company denies that any such business is monopolized by it or by its wholly owned subsidiaries and that either it or they have had or will continue to have any such monopolistic control and denies that there is any such monopolistic control which would have any effect in suppressing or preventing substantial competition which would otherwise arise in the production or sale in interstate or foreign commerce of
[fol. 555] bauxite or alumina or aluminum or aluminum products manufactured therefrom. Aluminum Company denies that it or its subsidiaries are performing any acts inimical to the public interest or in violation of Section 2 of the Sherman Anti-Trust Act.

54. Aluminum Company denies that it or its officers or directors or agents or affiliates or wholly owned subsidiaries from 1902 to the present have pursued any policy or adopted any devices designed to curtail, or having the effect of curtailing, shipments of aluminum or aluminum products from foreign countries to the United States and denies that it or its subsidiaries or representatives have thereby

protected or maintained any monopolistic control of Aluminum Company in the United States and denies that any such control exists. Aluminum Company denies that it or its officers or directors or agents or affiliates or wholly owned subsidiaries have entered into agreements or understandings with aluminum companies of foreign countries to limit world production or remove accumulated stocks or fix prices or allocate or restrict sales in world markets with the intent or effect of restraining importations of aluminum into the United States. It is true that, prior to 1928, Aluminum Company in a few instances acquired substantial and sometimes controlling interests in foreign aluminum producing and fabricating companies or in water power sites or power plants or bauxite deposits and leucite deposits, but in every case of such acquisition this was done in the ordinary and proper conduct of Aluminum Com- [fol. 556] pany's business and no such acquisition was intended to intimidate, nor did it intimidate, any foreign producer of aluminum or aluminum products, nor was any such acquisition made with the intent or effect of suppressing shipments of aluminum or aluminum products to the United States for sale in competition with Aluminum Company or protecting or maintaining any monopolistic control of Aluminum Company and no such monopolistic control existed. It is true that on some occasions prior to 1928 Aluminum Company purchased substantial interests in foreign aluminum companies in which major foreign producers of aluminum then held substantial interests, but all such purchases were made in the proper conduct of Aluminum Company's business. They did not create interlocking interests with most of Aluminum Company's world competitors nor were any such purchases made with the intent or effect of suppressing shipments of aluminum or aluminum products by such foreign producers to the United States for sale in competition with Aluminum Company. In the year 1928 with a few exceptions the foreign interests and holdings of Aluminum Company were transferred to Aluminium Limited as hereinbefore set forth.

The denials in this paragraph in so far as the same relate to five contracts of Aluminum Company or its subsidiary made many years ago are subject to the averments contained in paragraphs 56, 86, 87, 88 and 90 of this answer.

Except as stated above, Aluminum Company denies each and every averment contained in this paragraph.

[fol. 557] 55. Northern Aluminum Company entered into an agreement with the European producers of aluminum in 1902, but there was no understanding other than that set forth in said agreement. Aluminum Company admits the remaining averments contained in this paragraph except that it denies that the said agreement was made with the intent or effect of protecting or maintaining any monopolistic control.

56. This paragraph relates to a contract made on or about September 25, 1908. Aluminum Company is advised by counsel, believes and avers that the petition having set out that the principal and restrictive provisions of the contract mentioned in this paragraph were cancelled June 7, 1912, by decree of the District Court of the United States for the Western District of Pennsylvania, Aluminum Company is barred from any denial of said averments and for that reason Aluminum Company makes no denial of said averments.

57. Aluminum Company admits that, on June 10, 1912, it caused Northern Aluminum Company to enter into the contract referred to in this paragraph; that the contract restricted and allocated sales of aluminum outside the United States and provided that the quantity of aluminum to be sold in any one year by each of the parties and the prices therefor were to be fixed and determined by a committee named by the signatories. Aluminum Company admits that the French Aluminum Company, the Swiss Aluminum Company, and the British Aluminium Company, [fol. 558] Limited, were then engaged in the production of aluminum and in the exportation to the United States for sale in competition with the Aluminum Company and avers that the Anglo-Norwegian Company, Limited, and the Italian Company were only exporting a very limited amount, if any, for sale in the United States. Aluminum Company admits that the continuation of operations under said contract was rendered impracticable by the outbreak of the World War and that it was cancelled on January 29, 1915.

The said contract had been signed on or about April 28, 1912, but one of the proposed parties to the contract known as Guilini or Guilini Brothers afterwards decided not to be a party and consequently the contract was redrafted in substantially the same form but leaving out that participant and consequently changing the proportions somewhat. The

contract as thus changed was executed on or about June 10, 1912. Long before the entry of the said decree of June 7, 1912, Aluminum Company had fully acquainted the Attorney General of the United States with the fact that the said contract was about to be made and as it had to do only with business outside the United States the Attorney General made no objection whatever to the execution of same.

Aluminum Company denies that either the purpose or effect of said contract was to restrict any importations of aluminum to the United States or to restrain said commerce.

58. Aluminum Company denies that, with the intent or effect of maintaining or extending any monopoly in the [fol. 559] production or sale of aluminum, it organized the Demerara Bauxite Company, Limited. It did organize that company in 1916 under the laws of British Guiana for the purpose of holding and operating bauxite properties in that country, which were acquired and needed by Aluminum Company in the proper conduct of its business. It is true that the Demerara Bauxite Company, Limited, was retained as a wholly owned subsidiary of Aluminum Company until 1928, when it was transferred to defendant Aluminium Limited. Aluminum Company believes that Aluminium Limited has retained the Demerara Bauxite Company, Limited, but is without knowledge of the subject.

59. Aluminum Company denies that with the intent or effect of maintaining or extending any monopoly in the production or sale of aluminum it organized Surinaamsche Bauxite Maatschappij. It did organize that company in 1916 under the laws of Dutch Guiana for the purpose of holding and operating bauxite properties in that country which were acquired and needed by Aluminum Company in the proper conduct of its business. It is true that Aluminum Company has since retained said Dutch Guiana company as a wholly owned subsidiary to hold and operate bauxite properties in Dutch Guiana.

60. Aluminum Company denies that, with the intent or effect of maintaining or extending any monopoly in the production or sale of aluminum it incorporated Jadranski Bauxit Dioni'Co Drus'tvo. It did incorporate that com- [fol. 560] pany in 1921 under the laws of Jugo-Slavia for the purpose of holding and operating bauxite properties in that country which were acquired and needed by Aluminum

Company in the proper conduct of its business. It is true that said corporation was held as a wholly owned subsidiary of Aluminum Company until 1928 when it was transferred to defendant, Aluminium Limited. Aluminum Company is without knowledge whether or not Aluminium Limited has since retained said corporation.

61. It is true that in 1922 Aluminum Company purchased one-half interest in Norsk Aluminum Company, a corporation organized under the laws of Norway, engaged in producing aluminum there, but Aluminum Company denies that said company was engaged in exporting substantial or increasing quantities of aluminum to the United States for sale in competition with Aluminum Company. Aluminum Company denies that either the purpose or effect of said purchase was to eliminate any competition or to protect or maintain any monopolistic control of Aluminum Company in the United States against importations of aluminum from Europe to the United States or to intimidate European producers in any manner whatsoever and Aluminum Company denies that it had any such monopolistic control in the United States. The purpose of Aluminum Company in purchasing said interest in Norsk Aluminum Company was to acquire additional capacity for the manufacture of aluminum needed by Aluminum Company in the proper conduct of its business. Aluminum Company admits that it held [fol. 561] such interest in Norsk Aluminum Company until 1928 when it transferred the same to defendant, Aluminium Limited, but Aluminum Company is without knowledge whether or not Aluminium Limited has since retained said interest.

As shown by paragraph 81 of the petition, in 1922, with the consent of the then Attorney General, a modification of the aforesaid decree of June 7, 1912, was made removing injunctive prohibitions against said purchase.

62. It is true that in 1922 Aluminum Company purchased one-third interest in Det Norske-Nitrid, a corporation organized under the laws of Norway, the remaining two-thirds interest being held equally by the French Aluminum Company and British Aluminium Company, Limited. The word "Company" is not a part of the corporate name of Det Norske-Nitrid. It is true that French Aluminum Company and British Aluminium Company, Limited, were then en-

gaged in producing aluminum and in exporting some aluminum to the United States for sale in competition with Aluminum Company. Det Norske-Nitrid was engaged in producing aluminum but was not exporting aluminum to the United States. Aluminum Company denies that either the purpose or effect of its purchase of said one-third interest was to eliminate any competition of Det Norske-Nitrid or to restrain any competition of the French Aluminum Company or of the British Aluminium Company, Limited, and avers that both of said companies did and do offer their products in the United States in competition with Aluminum Com- [fol. 562] pany. The purpose of Aluminum Company in purchasing said interest in Det Norske-Nitrid was to acquire additional capacity for the manufacture of aluminum needed by Aluminum Company in the proper conduct of its business. Aluminum Company admits that it maintained said holding in Det Norske-Nitrid until 1928 when it transferred the same to defendant, Aluminium Limited, but Aluminum Company is without knowledge as to whether Aluminium Limited has since held it.

As shown by paragraph 81 of the petition, in 1922, with the consent of the then Attorney General, a modification of the aforesaid decree of June 7, 1912, was made so that nothing contained in said decree should be considered or construed to enjoin or restrain the said acquisition.

63. Aluminum Company admits that in 1923 it purchased a 40% interest in Carrieres de l'Arboussas, a corporation organized under the laws of France and owning and operating bauxite properties there. Aluminum Company admits that it retained said interest until 1928, when it transferred the same to defendant, Aluminium Limited, but Aluminum Company is without knowledge of whether or not Aluminium Limited has since retained the same.

The said French corporation was a small corporation owning bauxite lands in the south of France.

Aluminum Company denies that the said purchase was made with either the intent or effect of maintaining any [fol. 563] monopoly of Aluminum Company in the production or sale of aluminum and denies that it has any such monopoly. The purpose of Aluminum Company in purchasing the interest in said French corporation was to acquire additional bauxite needed by Aluminum Company in the proper conduct of its business.

64. Aluminum Company admits that in 1924 it acquired one-third interest in Fonderie de Precision, a corporation organized under the laws of France and engaged there in the manufacture of aluminum die castings, and that the remaining interest was retained by the French Aluminum Company then engaged in producing aluminum in France and in exporting some of same to the United States for sale in competition with Aluminum Company. Aluminum Company admits that it retained said one-third interest until 1928 when it transferred the same to defendant, Aluminium Limited, but Aluminum Company is without knowledge of whether or not Aluminium Limited has since held it.

Aluminum Company denies that either a purpose or effect of said transaction was, through the establishment of a joint venture with said French Aluminum Company, to suppress competition from said company or in any way to interfere with free and unrestrained competitive conditions and avers that said French Aluminum Company has offered, and does offer, products in the United States in competition with Aluminum Company. The purpose of Aluminum Company in purchasing said interest in Fonderie de Precision [fol. 564] was to acquire additional capacity for the manufacture of die castings needed by Aluminum Company in the proper conduct of its business.

65. Aluminum Company denies that at any time it acquired any interest in a company known as Det Norske Aktieselskab. Aluminum Company admits that in 1924 it acquired a 55% interest in a company known as Det Norske Aktieselskab for Elektrokemisk Industri, commonly called "Elektrokemisk," a corporation organized under the laws of Norway and owning water powers and patents on electrode processes and also acquired 100% interest in the Kinservik Company and in the Laate-Fos Company, corporation organized under the laws of Norway and owning undeveloped water powers there. Aluminum Company admits that the low cost production of aluminum requires large quantities of electric energy, for the economical generation of which water powers are essential in many cases or localities. Aluminum Company denies that either a purpose or effect of the said acquisitions was to restrain exports of aluminum to the United States for sale in competition with Aluminum Company or to threaten European producers with underselling in their own home market through availability there of large resources for the econom-

ical generation of hydro-electric energy or otherwise. The purpose of Aluminum Company in making the said acquisitions was to acquire additional water powers and facilities needed by Aluminum Company in the proper conduct of its business.

[fol. 565] Aluminum Company admits that it retained all of said interests until 1928 when it transferred the same to defendant, Aluminium Limited, but Aluminum Company is without knowledge of whether or not Aluminium Limited has since held them.

66. Aluminum Company admits that, in 1924, it acquired 50% (but not all) of the capital stock of Societa Anonyme Mineraria Triestina, a corporation organized under the laws of Italy and owning and operating bauxite properties there. In 1926 Aluminum Company acquired the remaining 50% of the stock of said corporation. Aluminum Company admits that it held said capital stock until 1928 when it transferred the same to defendant, Aluminium Limited, but Aluminum Company is without knowledge of whether or not Aluminium Limited has since retained said holding. It is true that the purpose and effect of this acquisition were to obtain substantial quantities of bauxite in Europe to aid in supplying the requirements of such aluminum producing plants there as Aluminum Company then held or might thereafter purchase or construct as well as for use in the United States if the said bauxite could be used to advantage by Aluminum Company in the latter country. Aluminum Company denies that this purchase was made in connection with any policy of restricting exportations of aluminum to the United States by threatening European producers with low cost production or underselling in their own home market or otherwise and denies that it had any such policy. The purpose of Aluminum Company in pur- [fol. 566] chasing said capital stock was to acquire additional bauxite needed by Aluminum Company in the proper conduct of its business.

67. Aluminum Company admits that in 1925 it acquired from the French Aluminum Company one-half interest in, and thereafter become a joint owner (in so far as any relation is created by owning one-half of the capital stock of a corporation) with the French Aluminum Company in Societa Dell'Alluminio Italiano, a corporation organized under the laws of Italy, and engaged there in manufac-

turing aluminum and aluminum products available for exportation to the United States for sale in competition with Aluminum Company. Aluminum Company admits that it retained one-half interest until 1928 when it transferred the same to defendant, Aluminium Limited, but Aluminum Company is without knowledge of whether or not Aluminium Limited thereafter acquired the remaining interest or whether or not it has since held said Italian corporation as a wholly owned subsidiary.

Aluminum Company denies that either the purpose or effect of such acquisition was to forestall any competition of Societa Dell'Alluminio Italiano or, by the acquisition of such partial control or the establishment of a joint venture with the French Aluminum Company or otherwise, to restrain the latter's exportations of aluminum to the United States for sale in competition with the Aluminum Company. Aluminum Company denies that Societa Dell'Alluminio Italiano was an important European producing company and avers that, on the contrary, it was a comparatively [fol. 567] small and unimportant company. The purpose of Aluminum Company in purchasing said interest was to acquire additional capacity for the manufacture of aluminum needed by Aluminum Company in the proper conduct of its business.

68. Aluminum Company admits that in 1925 it and the French Aluminum Company and the Swiss Aluminum Company organized and thereafter became owners of the capital stock of Aluminio Espagnol, incorporated under the laws of Spain to manufacture aluminum and aluminum products there. Aluminum Company admits that it retained its said holding until 1928 when it transferred the same to defendant, Aluminium Limited, but Aluminum Company is without knowledge of whether or not Aluminium Limited thereafter sold said holding to the French Aluminum Company.

Aluminum Company denies that either the purpose or effect of said ownership was to restrain exportations to the United States of said French Aluminum Company or of said Swiss Aluminum Company through the establishment of a further joint venture with the French Aluminum Company and an initial joint venture with the Swiss Aluminum Company or otherwise and denies that this ownership in any way limited or affected free and unrestrained competitive conditions in the United States or in competition with

Aluminum Company. Aluminum Company avers that both the French Aluminum Company and the Swiss Aluminum Company have offered, and now offer, their products for sale [fol. 568] in the United States in competition with Aluminum Company. The purpose of Aluminum Company in joining in the incorporation of Aluminio Espagnol was to acquire additional capacity for the manufacture of aluminum and aluminum products needed by Aluminum Company in the proper conduct of its business.

69. Aluminum Company admits that in 1925 it incorporated Primorski Bauxit Dioni' Co Drus'tvo (not Primorski Bauxite Company) under the laws of Jugo-Slavia to hold and operate bauxite lands previously acquired there and that the purpose and effect of acquiring said bauxite lands were to obtain substantial quantities of bauxite in Europe to aid in supplying the bauxite requirements of such aluminum producing plants as Aluminum Company then held or might thereafter purchase or construct either in Europe or elsewhere. Aluminum Company admits that it held said Primorski Bauxit Dioni' Co Drus'tvo as a wholly owned subsidiary until 1928 when it transferred the same to defendant, Aluminium Limited, but Aluminum Company is without knowledge of whether or not Aluminium Limited has since retained said company.

Aluminum Company denies that either the purpose or effect of acquiring said bauxite lands was in connection with any policy of restraining exportations of aluminum to the United States by threatening European producers with low cost production or underselling in their own home markets or otherwise and denies that it had any such policy. The purpose of Aluminum Company in acquiring said [fol. 569] bauxite lands was to obtain additional bauxite needed by Aluminum Company in the proper conduct of its business.

70. Aluminum Company admits that in 1926 it incorporated Forces Motrices du Bearn under the laws of France to hold and develop a large water power acquired there. Aluminum Company admits that in 1912 it had incorporated Bauxites du Midi under the laws of France to hold and operate bauxite properties acquired there for the purpose and with the effect of holding substantial quantities of bauxite in Europe to aid in supplying the requirements of such aluminum producing plants as Aluminum Company

might thereafter purchase or construct either in Europe or elsewhere. Aluminum Company admits that a purpose and effect of incorporating Forces Motrices du Bearn and Bauxites du Midi were to enable Aluminum Company to produce aluminum commercially in France. Aluminum Company admits that it held said Bauxites du Midi and said Forces Motrices du Bearn as wholly owned subsidiaries until 1928 when it transferred said companies to defendant, Aluminium Limited, but Aluminum Company is without knowledge of whether or not Aluminium Limited has since held them.

Aluminum Company denies that the purchase of said water power or bauxite properties was in connection with any policy of restraining exportations of aluminum to the United States by threatening European producers with low cost production or underselling in their own home markets or otherwise and denies that it had any such policy. Alumi- [fol. 570] num Company denies that any purpose or effect of incorporating either or both Forces Motrices du Bearn and Bauxites du Midi was to offer the threat to said French Aluminum Company of low cost production and destructive competition in its own home market if the latter should export aluminum to the United States in such quantities or sell therein at such prices as to interfere with any monopolistic control of the United States market by Aluminum Company and denies that it had any such monopolistic control.

The purpose of Aluminum Company in purchasing said bauxite properties and of incorporating Forces Motrices du Bearn and Bauxites du Midi was to obtain additional bauxite, water power and facilities needed by Aluminum Company in the proper conduct of its business.

71. Aluminum Company admits that in 1928 (but not 1926) it acquired nearly all of the stock of (but did not incorporate) Prodotti Chimici Napoli, a corporation formed under the laws of Italy, to engage in the refining of alumina from leucite but avers that this was only an experimental operation which was not successful and Aluminum Company denies that it had the effect of obtaining substantial quantities of alumina in Europe. Aluminum Company admits that it retained its interest in said Prodotti Chimici Napoli, but not as a wholly owned subsidiary, until 1931 when it was transferred to defendant, Aluminium Limited,

but Aluminum Company is without knowledge of whether or not Aluminium Limited has since held it.

[fol. 571] Aluminum Company denies that its acquisition of said interest in Prodotti Chimici Napoli was in connection with any policy of restraining exportations of aluminum to the United States by threatening European producers with low cost production or underselling in their own home markets or otherwise and Aluminum Company denies that it had any such policy. The purpose of Aluminum Company in acquiring said interest in Prodotti Chimici Napoli was to acquire additional quantities of alumina needed by Aluminum Company in the proper conduct of its business.

72. Aluminum Company admits that in 1928 it caused to be incorporated under the laws of the Dominion of Canada defendant, Aluminium Limited, to which Aluminum Company transferred all its business and holdings outside the United States except defendant Surinaamsche Bauxite Maatschappij, defendant Cedars Rapids Transmission Company, Limited, defendant Alcoa Power Company, Limited, and said interest in Prodotti Chimici Napoli. As consideration for said properties, Aluminium Limited issued all of its capital stock to Aluminum Company which thereupon distributed said stock, proportionately, among its own stockholders on the basis of one share of Aluminium Limited for each three shares of the common stock of Aluminum Company. Aluminum Company admits that the holdings of Andrew W. Mellon, R. B. Mellon and A. V. Davis at that time when added together constituted a majority of the capital stock of Aluminum Company and that therefore [fol. 572] they received more than 50% of the said stock of defendant, Aluminium Limited. Aluminum Company admits that a comparatively small number of persons, including corporations named as defendants in this suit, have continued to hold shares which, if added together, constitute a majority of the shares of stock in Aluminum Company and a majority of the shares of stock of Aluminium Limited, but avers that the shareholdings of the same three persons hereinbefore mentioned, when added together, do not still constitute more than 50 per cent. of the stock of Aluminum Company and of Aluminium Limited. By death and transfers the number of stockholders common to both companies has considerably decreased and will further continue to de-

crease by death and transfer, and the number of stockholders whose shares when added together constitute more than 50 per cent. of the stock of Aluminum Company and of Aluminium Limited has already increased and will continue to increase by deaths and transfers. Aluminum Company denies that the said stock control is now in persons prominent in the organization of Aluminum Company and denies that there are close relationships among the officials of both corporations and denies that both corporations use the same banking facilities or legal facilities or other facilities and denies that, through such stock ownership or otherwise, the holders of a majority of the capital stock of Aluminum Company and Aluminium Limited have controlled either the policies or activities or both of both Aluminum Company and Aluminium Limited. The contrary is the case. Aluminum Company denies that the officers and directors of Aluminium Limited from the time of its organization [fol. 573] have been almost without exception individuals formerly identified with the direction and management of Aluminum Company although it is true that many officers and directors of Aluminium Limited were individuals formerly identified with the direction or management of Aluminum Company although in many cases their former participation in the direction and management of Aluminum Company was slight. Aluminum Company is without knowledge whether or not Aluminium Limited has offices in the United States or whether or not many of its officials function or reside in the United States.

By 1928 Aluminum Company had not only grown to large size in the United States but also had subsidiaries conducting business in many foreign countries. The foreign business had grown to such an extent that it was not receiving attention commensurate with its importance but the possibilities, both present and future, in this foreign business were recognized and it was deemed wise, by the organization of Aluminium Limited, to arrange for regular and concentrated attention by that company to handling and developing trade in the foreign countries.

Another reason for organization of Aluminium Limited was that A. V. Davis, for many years President and the most active official of Aluminum Company, planned soon to retire from the active management of the business and would have done so except for the depression which began in the fall of 1929. At the time when A. V. Davis was planning for his

eventual retirement; Roy A. Hunt (son of Capt. Alfred E. [fol. 574] Hunt, deceased, who had been A. V. Davis's close friend and benefactor) was Vice President in charge of manufacturing and Edward K. Davis, A. V. Davis's brother, was Vice President in charge of sales. Each of these younger men had been employed by Aluminum Company for twenty-five years and had performed his duties well. By organizing Aluminium Limited and turning over to it the foreign business and holdings of Aluminum Company a way was provided to divide the burden which would thus fall on these two younger men and give to each an important executive position. The fact is that Aluminum Company and Aluminium Limited are, and have always been, entirely separate and independent corporations in every respect and neither has controlled any policies or activities of the other.

73. Aluminum Company is without knowledge as to the meaning of this paragraph, inasmuch as the paragraph avers that Aluminium Limited assumed the contractual obligations of, and continued the relationships and associations of, Aluminum Company with foreign producers of aluminum, without indicating what contractual obligations or what relationships or associations are referred to; and therefore Aluminum Company denies that Aluminium Limited assumed such contractual obligations or continued such relationships or associations. Aluminum Company is without knowledge whether or not Aluminium Limited has since effected further, or any, contractual relationships with any foreign producers.

74. Aluminum Company is without knowledge as to the [fol. 575] quantities or costs of aluminum produced by Aluminium Limited in Canada or Norway. Aluminium Limited has shipped on various occasions quantities of aluminum, some of which have been large, and has sold the same to Aluminum Company and to other purchasers and it has sold such aluminum to customers in the United States in competition with Aluminum Company. Aluminum Company denies that the United States is a logical market for products of Aluminium Limited. The latter's plants, properties and sales agencies and sales representatives are located in countries other than the United States and none of them are located in the United States. It would be a matter of much expense for Aluminium Limited to locate and

operate sales agencies in the United States. Aluminum Company does not at present export any material quantity of aluminum or products fabricated therefrom for sale abroad. Most of Aluminum Company's properties and all of its sales agencies are located in the United States and it would be a matter of much expense to install such facilities abroad. Aluminum Company denies that Aluminium Limited directs its own operations so as either to aid or supplement the operations of Aluminum Company or any other corporate defendants. Aluminium Limited is entirely at liberty to sell in the United States or abroad and Aluminum Company is entirely at liberty to sell in the United States or abroad. Aluminum Company denies that there is any failure of Aluminum Company and Aluminium Limited to compete with each other except to the extent to which such lack of competition exists as hereinbefore stated and denies that there is any common control of said [fol. 576] two corporations and denies that the stock ownership in either corporation has any effect whatever upon the control of the policies of either or both corporations and denies that there is any agreement or understanding of any nature whatsoever between the said two corporations which in any manner affects competition between them or affects the policies or management of either.

75. Aluminum Company denies each and every averment contained in this paragraph.

76. Aluminum Company denies each and every averment contained in this paragraph.

77. Aluminum Company denies that in July, 1931, or at any other time the policies of Aluminium Limited were directed through any common control exercised over it and Aluminum Company and denies that there is or has been any such control. Aluminum Company is informed and believes that some time about the year 1931 a corporation known as Alliance Aluminium Compagnie was incorporated under the laws of Switzerland and that Aluminium Limited is to some extent interested therein but Aluminum Company is without knowledge of any of the averments of this paragraph except as stated above.

78. Aluminum Company denies that there is any monopolistic control by Aluminum Company in the United States or elsewhere. Aluminum Company is without knowledge

as to any of the remaining allegations contained in this paragraph.

79. Aluminum Company denies that any policies of [fol. 577] Aluminium Limited either in 1931 or at any other time were directed through common control exercised over it and Aluminum Company denies that there was any such control and denies that, acting in behalf of or pursuant to an understanding with Aluminum Company, Aluminium Limited entered into the contract mentioned in this paragraph, if any such contract was executed, and denies that there was any such understanding. Aluminum Company is without knowledge whether or not any such contract was executed and is without knowledge as to any of the remaining averments contained in this paragraph.

80. Aluminum Company denies that in 1931 or at any other time the policies of Aluminium Limited were directed through common control exercised over it and Aluminum Company and denies that there was any such control and denies that Aluminium Limited, in behalf of and pursuant to an understanding with Aluminum Company, entered into the contract mentioned in this paragraph, if any such contract was executed, and denies that there was any such understanding. Aluminum Company is without knowledge whether or not any such contract was executed and is without knowledge as to any of the remaining averments contained in this paragraph.

81. Aluminum Company admits that it submitted to the Department of Justice its proposal to acquire the aforesaid interests in Norsk Aluminum Company and Det Norske-Nitrid and in 1922 obtained the consent of the then Attorney General to a modification of the aforesaid decree of June 7, 1912, so that nothing contained in said decree should [fol. 578] be considered or construed to enjoin or restrain said acquisition. Aluminum Company admits that in advance of its purchase of the properties of the Southern Aluminium Company, such proposed purchase was submitted to the Department of Justice but denies that this was a proposal of Aluminum Company and avers on the contrary that it was a proposal made by counsel for the owners of the property who themselves submitted the proposal to the Department of Justice. It is true that G. Carroll Todd, Assistant to the Attorney General, issued a letter stating that the Depart-

men of Justice saw nothing in the facts submitted on this proposal which would call for action by the Department under the aforesaid decree of June 7, 1912, but denies that this letter referred to facts submitted by counsel for Aluminum Company and avers that, on the contrary, it referred to facts submitted by counsel for the owners of the property. The letter of the Department of Justice was dated September 3, 1915, and issued on or about that date. Aluminum Company is without knowledge whether or not the Department of Justice had before it the question whether these transactions considered with other acquisitions and facts alleged in the petition constituted violations of the Sherman Anti-Trust Act. Aluminum Company denies that except as alleged in this paragraph of the petition, Aluminum Company at no time submitted to the Department of Justice proposals or facts relating to acquisitions or transactions set forth in the petition. On the contrary, Aluminum Company in addition submitted to the Department of [fol. 579] Justice its intention to execute the agreement originally executed under date of April 28, 1912, for which was substituted an agreement dated June 10, 1912, referred to in paragraph 57 of this answer. The leasing of the plants of Aluminum Manufactures, Inc., to Aluminum Company of America in 1922 referred to in paragraph 7 of the petition was thoroughly investigated by the Department of Justice and no objection was made thereto. In addition thereto Aluminum Company over a long course of years has been extraordinarily diligent in submitting to the Department of Justice facts relating to the acquisitions or transactions set forth in the petition.

82. Aluminum Company denies that any agreements or understandings by Aluminum Company with foreign producers or any acquisitions or purchases of Aluminum Company abroad have been designed to restrain, or have had the effect of restraining, exports of bauxite or alumina or aluminum or aluminum products into the United States or sales thereof in interstate or foreign trade or commerce in competition with Aluminum Company or in violation of the Sherman Anti-Trust Act and denies that they or any of them have in any manner aided in establishing or protecting or maintaining any monopolistic control of Aluminum Company in the United States and denies that any such monopolistic control exists or is maintained and Aluminum

Company denies that there have been any agreements or understandings mentioned in preceding parts of the petition except as hereinbefore specifically admitted by it. Alumi- [fol. 580] num Company is without knowledge of what agreements or understandings, if any, Aluminium Limited has with foreign producers.

The denials in this paragraph, in so far as the same relate to five contracts of Aluminum Company or its subsidiary made many years ago, are subject to the averments contained in paragraphs 56, 86, 87, 88 and 90 of this answer.

83. Aluminum Company denies that any monopolistic control of the aluminum industry in the United States by Aluminum Company has been acquired or extended or maintained by unfair, unreasonable or oppressive agreements or understandings or by contracts or combinations or conspiracies in restraint of interstate or foreign trade or commerce and denies that it has any such monopolistic control. The denials in this paragraph, in so far as the same relate to five contracts of Aluminum Company or its subsidiary made many years ago, are subject to the averments made in paragraphs 56, 86, 87, 88 and 90 of this answer.

84. It is true that in 1894 Aluminum Company was called The Pittsburgh Reduction Company. Aluminum Company denies that in 1894 it made any contract with Niagara Falls Power Company for power. In 1893 Aluminum Company made a contract with Niagara Falls Power Company, a New York corporation, for power for Aluminum Company's new aluminum producing plant at Niagara Falls, New York, and admits that said Power Company was then outstanding in hydro-electric development. Aluminum Company denies that in said contract said Power Company agreed not to [fol. 581] supply power to any other aluminum producing company. On the contrary the provision in the contract was substantially this, that the Power Company agreed not to furnish or sell to any other person or company electric power to be used in the manufacture of aluminum at rates less than those fixed in the contract as payable by Aluminum Company. Aluminum Company denies that the prohibition in said contract is still in full force or effect. There were other subsequent contracts made between Aluminum Company and said Power Company containing pro-

visions substantially to the effect that the Power Company agreed not to supply power to any other aluminum producing company. Said restrictive provisions in all of said contracts have been cancelled and Aluminum Company denies that any of said restrictive provisions is still in full force or effect. Aluminum Company admits that it purchases substantial quantities of mechanical power from said Power Company but denies that this is under any exclusive arrangement whereby it receives discriminatory rates or advantages not available to others. The agreements for the purchase of said mechanical power being made many years ago and still being in full force and effect, Aluminum Company has the right to procure power under said agreements at the rates therein called for until those rates shall have been determined by proper authority to be exclusive, no such determination ever having been made and no such discrimination in fact existing. Aluminum Company admits that in 1893 it knew that large quantities of low cost electric energy were useful, but denies that they were neces- [fol. 582] sary, for the commercial production of aluminum. Except as stated above, Aluminum Company denies each and every averment contained in this paragraph.

85. Aluminum Company denies that in 1902 it caused Northern Aluminum Company, Limited, to make any contract with the Shawinigan Water and Power Company and denies that any such contract was made. In 1902 Aluminum Company, then called The Pittsburgh Reduction Company, made a contract with Shawinigan Water and Power Company for power for The Pittsburgh Reduction Company's new plant at Shawinigan Falls, Canada. Aluminum Company denies that the said contract contained any agreement of Shawinigan Water and Power Company not to supply power to any other aluminum producing company. Aluminum Company admits that Shawinigan Water and Power Company was a Canadian corporation then outstanding in hydro-electric development. Aluminum Company knew that large quantities of low cost electric power were useful but denies that they were required for the commercial production of aluminum and denies that the said contract or any provision therein was made with the intent or effect of forestalling competition in the production or sale of aluminum or for extending any monopoly

therein beyond the life of the patents hereinbefore described. Except as stated above, Aluminum Company denies each and every averment contained in this paragraph.

86. This paragraph relates to a contract made on or about July 25, 1905. Aluminum Company is advised by counsel, believes and avers that the petition having set out that the restrictive provisions of the contract mentioned [fol. 583] in this paragraph were cancelled June 7, 1912, by decree of the District Court of the United States for the Western District of Pennsylvania, Aluminum Company is barred from any denial of said averments and for that reason Aluminum Company makes no denial of said averments.

87. This paragraph relates to a contract made on or about January 1, 1907. Aluminum Company is advised by counsel, believes and avers that the petition having set out that the restrictive provisions of the contract mentioned in this paragraph were cancelled June 7, 1912, by decree of the District Court of the United States for the Western District of Pennsylvania, Aluminum Company is barred from any denial of said averments and for that reason Aluminum Company makes no denial of said averments.

88. This paragraph relates to a contract made on or about April 20, 1909. Aluminum Company is advised by counsel, believes and avers that the petition having set out that the restrictive provisions of the contract mentioned in this paragraph were cancelled June 7, 1912, by decree of the District Court of the United States for the Western District of Pennsylvania, Aluminum Company is barred from any denial of said averments and for that reason Aluminum Company makes no denial of said averments.

89. Aluminum Company admits that in 1909 it acquired and has since retained 26% of the capital stock of Aluminum Goods Manufacturing Company. Aluminum Com- [fol. 584] pany has representation upon the directorate of Aluminum Goods Manufacturing Company in the form of two directors out of six. Aluminum Company denies that in 1909 Aluminum Goods Manufacturing Company was engaged in the manufacture or sale of aluminum cooking utensils. That company did not engage in that business until several years after 1909. In 1909 Aluminum Goods

Manufacturing Company was engaged in the manufacture and sale of certain fabricated aluminum products in interstate commerce but, if at that time said company in selling said fabricated products came into competition with The Aluminum Cooking Utensil Company, such competition was negligible and Aluminum Company is without knowledge whether or not such competition in said aluminum fabricated products in point of fact existed. Aluminum Company denies that either the purpose or effect of said acquisition of stock in Aluminum Goods Manufacturing Company was to obtain for Aluminum Company an important influence over the policies of Aluminum Goods Manufacturing Company or to restrain any competition. Aluminum Company admits that it and its officers now own approximately 31% of the capital stock of Aluminum Goods Manufacturing Company and that among the directors of the latter are two of Aluminum Company's officers. Aluminum Company is without knowledge as to any of the remaining averments of this paragraph. If any such transactions occurred Aluminum Company denies that the effect thereof was to give Aluminum Company any monopolistic control of any trade or commerce.

[fol. 585] 90. This paragraph relates to a contract made on or about November 16, 1910. Aluminum Company is advised by counsel, believes and avers that the petition having set out that the restrictive provisions of the contract mentioned in this paragraph were cancelled June 7, 1912, by decree of the District Court of the United States for the Western District of Pennsylvania, Aluminum Company is barred from any denial of said averments and for that reason Aluminum Company makes no denial of said averments.

91. Aluminum Company is without knowledge as to the averments contained in this paragraph except as follows: On or about October 21, 1912, a contract was made between Societe Generale des Nitrures, a joint stock company of the Republic of France, the Southern Aluminium Company, a corporation of the State of New York, Northern Aluminum Company, Limited, a corporation of the Dominion of Canada, and Aluminum Company. This contract, among other things, provided for the formation of a corporation in the United States designated as the Nitrogen Corpo-

ration to acquire certain patents from Societe Generale des Nitrures and to conduct operations thereunder in order to produce alumina and ammonia from bauxite. This patented process was known as the "Serpek" process. Pursuant to said contract, Aluminum Company built an experimental plant in the United States and endeavored to work out said process commercially but it proved to be a failure. Aluminum Company had believed that the Serpek process might be developed into a satisfactory process for [fol. 586] making alumina and desired to obtain the right to proceed under the patents covering the same but the French owners of the patents declined to give Aluminum Company the exclusive right under the process for fear it might turn out to be a better process for making aluminum than any other. Consequently they reserved the right to make alumina therefrom for or in the Southern Aluminium Company in which the French interests had invested. The patents were owned by Societe Generale des Nitrures but Aluminum Company is without knowledge of what the relations were between the French Aluminum Company and the Societe Generale des Nitrures and Aluminum Company is without knowledge whether or not the French Aluminum Company controlled Societe Generale des Nitrures or the Southern Aluminum Company. It is true that the French Aluminum Company was then a large European producer of aluminum. Aluminum Company denies that the purpose or effect of said contract was to prevent the manufacture of alumina under the said patents by others in the United States or Canada. So far as Aluminum Company knows, there were no others in the United States or Canada who wished to operate under said patents or to manufacture alumina under the said process. It is true that, if the process had turned out to be successful, Aluminum Company, like any other holder of rights under a patent, would have endeavored to prevent infringement thereof. Aluminum Company denies that the purpose or effect of said contract was to create an interlocking interest between Aluminum Company and said French Aluminum [fol. 587] Company and denies that the carrying out of said contract effected joint operations in the production of alumina and denies that the purpose or effect of said contract or any such operations was to suppress imports of aluminum or aluminum products into the United States by

said French Aluminum Company. It is true that the manufacture of alumina under said patents proved to be impracticable and said contract was therefore cancelled by the parties in 1920.

92. It is true that, in March, 1918, Aluminum Company entered into a contract with the Cleveland Metal Products Company, a corporation organized under the laws of Ohio, and since 1915 engaged at Cleveland, Ohio, in the production of aluminum sheet and its sale in interstate and foreign trade and commerce in competition with Aluminum Company. Aluminum Company denies that the said Cleveland Metal Products Company was the first competitor of Aluminum Company in the United States in the production and sale of aluminum sheet, and Aluminum Company denies that it was the only competitor and avers that there were other competitors in that business. The United States having entered the World War and being about to fix the price of sheet aluminum (which the United States did in March, 1918), the prices of sheet aluminum began to recede and the Cleveland Metal Products Company incurred heavy losses for the first two months of 1918 with a prospect of continuance. That company had entered into a contract with Aluminum Company for the purchase of aluminum ingot running into the future. Accord- [fol. 588] ingly, the Cleveland Metal Products Company and Aluminum Company contracted to incorporate the Aluminum Rolling Mill Company for the purpose of taking over the plant of the Cleveland Metal Products Company, enlarging it and increasing the product, the latter company contributing the mill and the minority of the money needed to effect the enlargement and Aluminum Company furnishing a majority of the money in the hope that the Aluminum Rolling Mill Company could be operated at a profit. Accordingly, pursuant to the terms of said contract, Aluminum Rolling Mill Company was incorporated under the laws of Ohio to purchase and operate the rolling mill theretofore owned and operated by said Cleveland Metal Products Company, Aluminum Company then purchasing about two-thirds of the capital stock of, and obtaining the control of the management and operation of, said Aluminum Rolling Mill Company. Aluminum Company denies that the purpose or effect of said contract was to re-establish Aluminum Company's complete monopoly in the production

and sale of aluminum sheet by the elimination of the competition of said Cleveland Metal Products Company or to establish any monopoly in said business. Aluminum Company admits that, in August, 1923, in compliance with an order of the United States Circuit Court of Appeals for the Third Circuit, the decision being reported in 284 Federal Reporter 401, Aluminum Company divested itself of said stock of the Aluminum Rolling Mill Company by selling the same to the Cleveland Metal Products Company. [fol. 589] It is true that shortly thereafter Aluminum Company obtained a judgment against said Aluminum Rolling Mill Company for indebtedness and acquired said rolling mill at sheriff's sale. The fact is that said indebtedness amounted to $600,000 for aluminum ingot and pig aluminum purchased by Aluminum Rolling Mill Company during its operations but not paid for and represented by promissory notes of the debtor. The only way in which Aluminum Company could collect any part of said debt was to bring suit on the notes and, after judgment, levy on the plant and bid at the sheriff's sale. Aluminum Company having informed the Federal Trade Commission of its intention to proceed in this manner, the latter filed a petition in the said Circuit Court of Appeals for the Third Circuit asking the court to modify its decree entered in the case above mentioned so as to enjoin Aluminum Company, its officers, subsidiaries and affiliated companies from acquiring any of the physical assets of the Aluminum Rolling Mill Company. After argument by counsel for the Commission and for Aluminum Company, the court, in June, 1924, denied the petition for the amendment of the decree, the case being reported in 299 Federal Reporter, 361.

93. Aluminum Company denies that it shares responsibility for the policies or activities of Aluminum Goods Manufacturing Company except to the extent to which two directors out of six could determine such policies or activities. Aluminum Company admits that Aluminum Goods Manufacturing Company in 1919 purchased the aluminum [fol. 590] sheet rolling mill at St. Louis, Missouri, then owned and operated by Bremer-Waltz Corporation which was engaged in the production of aluminum sheet and the sale thereof in interstate trade and commerce in competition with Aluminum Company. This purchase was made contrary to the advice of Arthur V. Davis and Roy A. Hunt,

two of the directors of Aluminum Goods Manufacturing Company. The Bremer-Waltz Corporation was a very small company and its competition was negligible. Aluminum Company denies that Bremer-Waltz Corporation was its only competitor in the production and sale of aluminum sheet. Aluminum Company denies that either the purpose or effect of such purchase was to eliminate competition. On the contrary, Aluminum Company avers that when, in 1919, Aluminum Goods Manufacturing Company determined to produce part or all of the aluminum sheet consumed by it in the manufacture of aluminum cooking utensils and other aluminum fabricated articles it thereafter purchased said Bremer-Waltz Corporation plant at St. Louis. Subsequently in the year 1923, Aluminum Goods Manufacturing Company erected a new aluminum sheet rolling mill at Manitowoc near its aluminum fabricating plant in that city which last mentioned rolling mill has been ever since and is now engaged in the manufacture of aluminum goods and in the production of sheet. After the Aluminum Goods Manufacturing Company had completed the erection and equipment of the last mentioned rolling mill at Manitowoc, it discontinued the rolling of sheet in the former Bremer-Waltz Corporation mill at St. Louis, [fol. 591] Missouri, inasmuch as rolling mill operations at Manitowoc were found to be more economical and efficient and in the year 1924 Aluminum Goods Manufacturing Company dismantled the former Bremer-Waltz Corporation St. Louis aluminum sheet rolling mill and subsequently sold the property and has never since had any ownership of or interest in the same.

94. Aluminum Company admits that in 1924 it purchased and has since retained one-third of the capital stock of Republic Carbon Company, a corporation organized under the laws of Delaware, to manufacture at Niagara Falls, New York, carbon electrodes suitable in the production of special grades of steel. Aluminum Company denies that the said carbon electrodes were suitable for the production of aluminum although they were suitable for the production of alumina by a process then being developed by the Aluminum Company. By making substantial changes in the equipment and process, carbon electrodes suitable for the production of aluminum could have been produced in said plant. It is true that with the termination of the World

War the demand for carbon electrodes materially declined as was the case with practically all other commodities. In due course of time the demand for carbon electrodes increased and at the present time there is an active demand for them, which demand always exists in normal business conditions. Aluminum Company denies that Republic Carbon Company at any time had determined to engage in the production of aluminum. Aluminum Company is without [fol. 592] out knowledge of what sums of money were expended by Republic Carbon Company in locating and acquiring bauxite lands or in overcoming legal obstacles raised in connection therewith by a subsidiary of Aluminum Company, the only legal obstacle raised by any such subsidiary being an attempt to enforce what Aluminum Company believed to be a valid contract for the purchase of certain bauxite land or property, the acquisition of which was advisable because it was so located as to be likely to interfere with the proper and healthful operations of Aluminum Company or its subsidiary in mining bauxite from certain land owned by the latter situate on the Demerara River in British Guiana. Aluminum Company denies that because of the possession of bauxite lands or of long-term contracts for the supply of hydro-electric energy or of a plant equipped to manufacture carbon electrodes or of ample financial resources, the Republic Carbon Company offered to Aluminum Company the threat of competition in the production of aluminum or its sale in interstate or foreign commerce and denies that the purpose or effect of said purchase was to forestall said competition. With the exception of a tract of land on the Demerara River in British Guiana which alone would not furnish a sufficient supply of bauxite, Aluminum Company is without knowledge of what bauxite lands Republic Carbon Company possessed in 1924 and is without knowledge of what long-term contracts it then possessed for the supply of hydro-electric energy and is likewise without knowledge of what financial resources Republic Carbon Company had in 1924.

[fol. 593] 95. It is true that in 1924 Aluminum Company, then owning certain patents covering casting processes for commercial production of aluminum pistons, acquired an exclusive license to manufacture and sell aluminum pistons under certain basic patents covering the design or structure of such pistons. It is true that in 1924 Aluminum

Company was the sole domestic producer of virgin aluminum in the United States but Aluminum Company denies that virgin aluminum is a product indispensable in the manufacture of aluminum pistons and avers on the contrary that they can be produced from secondary aluminum. Since the year 1927 Aluminum Company has not had an exclusive license under said design patents. On the contrary at least one other producer received a license thereunder in 1927 and still holds the same. Aluminum Company denies that either the purpose or effect of acquiring said exclusive license (which license is no longer exclusive) was to obtain for Aluminum Company a monopoly in the production or sale of aluminum pistons in interstate or foreign commerce and denies that such monopoly is held either by Aluminum Company or its licensees.

96. Aluminum Company admits that in 1924 James B. Duke controlled extensive hydro-electric properties in Canada and commanded large reserves of capital. Aluminum Company is without knowledge of whether or not in 1924 James B. Duke was a citizen of the State of New Jersey or whether or not he controlled extensive hydro-electric properties in the United States or whether or not he entered upon negotiations to engage in a joint venture with George [fol. 594] D. Haskell to produce aluminum for sale in interstate or foreign trade and commerce in competition with Aluminum Company or whether or not George D. Haskell possessed valuable information with respect to the production of aluminum. Aluminum Company is without knowledge of what, if any, plans said Duke and said Haskell formulated to use the electric energy developed by the aforesaid water powers or whether or not they expended substantial sums of money in furtherance of these plans. On April 15, 1925, Aluminum Company executed a written agreement with said James B. Duke in confirmation of a previous verbal agreement between them by which the Aluminum Company purchased from the James B. Duke interests a certain water power consisting of what is known as the Lower Development on the Saguenay River in the Province of Quebec, Canada. The said agreement called for the transfer of the water power property to a corporation whose shares of stock were to be transferred to a United States corporation to be incorporated for that purpose and then merged with Aluminum Company in

order that said shares of stock might thereby be vested in Aluminum Company. The said merger was merely a step in the procedure by which the said shares were transferred to, and vested in, Aluminum Company. The terms of the said agreement of April 15, 1925, are not correctly stated in the petition and, for greater certainty in the statement of the terms of the agreement, Aluminum Company refers to the agreement itself. Pursuant to this agreement the said Canadian Manufacturing and Development Company [fol. 595] was incorporated in 1925 and, after having acquired the stock of Chute a Caron Company which owned said water power, Canadian Manufacturing and Development Company, a Pennsylvania corporation, merged with Aluminum Company in order to accomplish said transfer of said property. Duke by the said agreement for the sale of said water power to Aluminum Company agreed to furnish the latter with certain quantities of electric energy for temporary purposes. Aluminum Company denies that either it or Arthur V. Davis, its then President, or any other director or officer of Aluminum Company, knew anything about the alleged plans of said Duke and said Haskell or had any intent of eliminating them as potential competitors, or had any intimation whatever of the existence of such plans until after the said agreement of April 15, 1925, had been executed and carried out by the transfer of said water power to Aluminum Company. As early as the year 1922 Aluminum Company began negotiations with the said James B. Duke for the purchase of said water power. In the fall of 1924 a representative of the said Duke called to see Arthur V. Davis as President of Aluminum Company and suggested that Aluminum Company should purchase the said water power, as a result of which conferences were shortly thereafter held between said Arthur V. Davis and James B. Duke, finally resulting in the contract of purchase hereinbefore mentioned. Aluminum Company is without knowledge whether or not, as a result of said agreement, Duke or the Duke interests abandoned the aforesaid joint [fol. 596] venture with said Haskell. Aluminum Company denies that the intent in entering into the aforementioned agreement was to cause the said Duke or the Duke interests to abandon the aforesaid joint venture with Haskell, and is without knowledge whether or not there was in fact a joint venture as alleged or otherwise or the terms thereof.

It is true that the said Duke interests obtained one-ninth of the capital stock of Aluminum Company in return for the transfer and conveyance of said water power and membership of one director out of a board of seven of the Aluminum Company. Aluminum Company denies that it paid any amount whatever in excess of the true value of the property acquired by it or that said property was acquired for the said purpose of eliminating any competition, potential or otherwise. The fact is that the water power acquired by Aluminum Company by said purchase was well worth the consideration paid therefor. Aluminum Company denies that the additional water power thus acquired by it was in excess of its legitimate requirements and denies that it was not needed for the normal operation and development of Aluminum Company and avers that it was so needed and was not in excess of its legitimate requirements. Aluminum Company did not organize Alcoa Power Company, Limited. The Duke interests before, and not after, said merger organized under the laws of the Dominion of Canada, the Chute a Caron Company, the name of which was afterwards changed to Alcoa Power Company, Limited. Alcoa Power [fol. 597] Company, Limited, has since been retained by Aluminum Company as a wholly owned subsidiary to hold and develop said water power. It is true that Aluminum Company, through its then wholly owned subsidiary, Aluminum Company of Canada, theretofore known as Northern Aluminum Company, Limited, constructed a large, low cost aluminum-producing plant on the Saguenay River. It is true that Aluminum Company in 1928 transferred all the shares of Aluminum Company of Canada to defendant, Aluminium Limited, but Aluminum Company is without knowledge of whether or not Aluminium Limited has since held the same, although it believes this to be the case.

The fact is that the acquisition of said water power from said James B. Duke interests was not for the purpose of any monopolization or restraint of trade but was the acquisition of water power needed by Aluminum Company in the proper conduct of its business. Except as stated above, defendant denies each and every averment contained in this paragraph.

97. Aluminum Company admits that in 1926 it acquired 53% of the capital stock of Duke-Price Power Company, a corporation organized under the laws of the Dominion of

Canada and owning and operating on said Saguenay River a hydro-electric plant (referred to as the Upper Development) which complemented the undeveloped water power obtained by Aluminum Company through its purchase of same from the James B. Duke interests. Said plant and water powers (that is, both the Upper Development and [fol. 598] Lower Development) comprised all the facilities then available on the Saguenay River for the production of electric energy. It is not true that said facilities had a capacity of approximately 1,540,000 horse-power. It is possible that horse-power in that aggregate could be obtained on said Saguenay River by the full development of the said water powers by the erection and equipment of the necessary power stations, etc., but this would require the expenditure of a very large sum of money, in addition to the amount already expended, on such construction along said river. It is true that a purpose and an effect of said stock acquisition were to enlarge the capacity of Aluminum Company for low cost production outside of the United States, but Aluminum Company denies that said stock acquisition either operated or was intended to operate as a threat to dissuade European producers from interfering with Aluminum Company's alleged monopoly of the United States market and denies that Aluminum Company had any such monopoly. It is true that Aluminum Company retained the said 53% of the capital stock of Duke-Price Power Company until 1928 when it transferred the same to defendant, Aluminium Limited. Aluminum Company is without knowledge of whether or not Aluminium Limited still retains said stock although Aluminum Company believes this to be the case.

98. Aluminum Company admits that in 1927 it was and theretofore had been and is now the sole producer of virgin aluminum in the United States but denies that it fixed or established the prices for all virgin aluminum moving in in- [fol. 599] terstate trade or commerce and denies that said product is indispensable in the manufacture of aluminum sheet. Aluminum Company denies that in 1927, or at any other time, it either fixed or established the prices for all aluminum sheet moving in interstate trade or commerce. Aluminum Company is without knowledge of what proportion of aluminum sheet moving in interstate trade or commerce in 1927 or at any other time was produced by it. Aluminum Company admits that Sheet Aluminum Corpora-

tion of Jackson, Michigan, and Fairmont Aluminum Company of Fairmont, West Virginia, both began operations in or about 1926 and in 1927 were producing a certain amount of aluminum sheet and selling the same in interstate and foreign trade and commerce in competition with Aluminum Company, but Aluminum Company denies that they were required, because of its control over prices, to purchase virgin aluminum, and to sell aluminum sheet, at prices established by Aluminum Company, and denies that it had control over such prices and denies that Aluminum Company knew any such facts inasmuch as they did not exist. Aluminum Company denies that it maintained any prices for virgin aluminum and aluminum sheet if this averment in the petition means anything more than that Aluminum Company established the prices of its own product. Aluminum Company denies that any prices for vigin aluminum or aluminum sheet at any time maintained by it would limit to a narrow margin of profit the operations of any competing sheet manufacturer selling his sheet in interstate trade or commerce. Aluminum Company denies that, during the [fol. 600] period August 1 to October 20, 1927, it effected changes in the respective prices of virgin aluminum and of aluminum sheet which so reduced the differentials between these prices that a competing sheet manufacturer, even though he should roll efficiently and should conduct his business with thrift, skill and good judgment, could not continue operations without incurring losses destructive of his business. Aluminum Company denies that the result of any price changes in 1927 was that said Sheet Aluminum Corporation was advised virtually to suspend operations and denies that, as a result of said price changes, said Fairmont Aluminum Company was obliged to suffer serious losses or to curtail its operations substantially or to establish an interlocking interest with the foreign producers of aluminum in order to remain in business. Aluminum Company admits that the competition offered by Cleveland Metal Products Company, during the period 1915 to 1918, was terminated in 1918 when its mill came under the control of Aluminum Rolling Mill Company, 60% of the stock of which company was owned by Aluminum Company. In 1924 Aluminum Company was obliged to take the mill in order to realize a part of the sum owed to it by Aluminum Rolling Mill Company instead of losing all of said debt. The compe-

tition offered at any time by said Cleveland Metal Products Company was negligible. Aluminum Company denies that the competition offered by said Bremer-Waltz Corporation was terminated in 1919 when its mill was acquired by Aluminum Goods Manufacturing Company. The competition at [fol. 601] any time offered by Bremer-Waltz Corporation was negligible and the amount thereof was increased by the purchase of said mill by Aluminum Goods Manufacturing Company so long as the latter continued to operate the said mill. Aluminum Company denies that said Sheet Aluminum Corporation and said Fairmont Aluminum Company offered the only other competition of consequence in interstate trade and commerce in aluminum sheet encountered by Aluminum Company and avers on the contrary that there were and are other competitors engaged in said commerce in aluminum sheet. Aluminum Company denies that any purpose of effectuating said reductions in differentials was to eliminate any competition of said Sheet Aluminum Corporation or of said Fairmont Aluminum Company or to preserve any monopolistic control of said trade or commerce by Aluminum Company and denies that it had any such monopolistic control and denies any effect of said reduction was the virtual elimination of the competition of said Sheet Aluminum Company or the contraction of the competition of said Fairmont Aluminum Company or the preservation of any monopolistic control and denies that Aluminum Company had any such monopolistic control.

99. Aluminum Company admits that, during the period 1924 to 1931, it was then and theretofore had been and is now the sole producer of virgin aluminum in the United States but denies that it either fixed or established the prices for all virgin aluminum moving in interstate trade and commerce and denies that said product is indispensable in the manufacture of aluminum alloy sheet. It is true that Alumi- [fol. 602] num Company manufactured a large proportion of the total domestic output of aluminum alloys, a product resulting from mixing aluminum in a molten state with other metals but denies that it was able to or did establish the prices for all aluminum alloy sheet moving in interstate trade and commerce. It is true that about the year 1919 or 1920 Baush Machine Tool Company of Springfield, Massachusetts, began the manufacture of aluminum alloy sheet and it was the first and therefore the only domestic competi-

tor in the field of aluminum alloys. Aluminum Company admits that Baush Machine Tool Company sold a certain amount of said aluminum alloys in interstate trade and commerce but denies that it had become an important producer thereof by 1924 or at any time. Aluminum Company denies that any competitor in the manufacture or sale of aluminum alloys would be required, because of Aluminum Company's control over prices, to purchase virgin aluminum, or to sell aluminum sheet, at prices established by it and denies that Aluminum Company had any such control over prices. Aluminum Company denies that, during the period 1924 to 1931, it effected changes in the respective prices of virgin aluminum and of aluminum alloy sheet which so reduced the differentials between the prices of virgin aluminum and of said sheet that any competitor in the manufacture or sale in interstate trade or commerce of aluminum alloy sheet, even though he should roll efficiently and should conduct his business with thrift, skill and good judgment, would be unable to carry on operations without incurring losses destruc-
[fol. 603] tive of his business. On the contrary any such manufacturer who had an adequate plant and rolled efficiently and conducted his business with thrift, skill and good judgment would have been able to make a profit. Aluminum Company denies that, as a result of any differential fixed by Aluminum Company for the sale of its products, Baush Machine Tool Company was obliged to conduct its sheet operations at losses which accumulated over the period 1924 to 1931 until said company was compelled virtually to suspend such production. While Aluminum Company believes that Baush Machine Tool Company virtually suspended such production in 1931, this was at the height of the business depression when nearly all manufacturing businesses were losing money. In 1919 Baush Machine Tool Company had a well-established machine tool business which had been in existence for many years and is still in existence. In 1919 or shortly thereafter, without any experience in the aluminum business, it attempted to go into the business of manufacturing certain aluminum products and aluminum alloy products in a plant which was improvised for this purpose and which was not kept abreast of modern developments in trade by making the necessary and large expenditures required for additional improvements and equipment. Any losses made by Baush Machine Tool

Company in the aluminum alloy business were a result of the foregoing causes and of the great business depression which began in the fall of 1929 and were not due to any improper act of Aluminum Company. Aluminum Company [fol. 604] admits that, since 1931, it has encountered no competition of consequence in the domestic production of aluminum alloy sheet or its sale in interstate trade and commerce. Aluminum Company denies that either the purpose or effect of said reductions and differentials was to eliminate any competition of said Baush Machine Tool Company or to establish or extend or maintain any monopolistic control of said trade and commerce by Aluminum Company and denies that the latter has any such monopolistic control.

100. Aluminum Company denies each and every averment contained in this paragraph of the petition. This denial, in so far as the same relates to five contracts of Aluminum Company or its subsidiary made many years ago, is subject to the averments contained in paragraphs 56, 86, 87, 88 and 90 of this answer.

101. Aluminum Company admits that, on March 1, 1937, it announced an advance of 1¢ per pound in the car-lot price of virgin ingot. It denies that it had maintained the price of 19¢ per pound since October, 1934. The fact is that Aluminum Company quoted the price of 19¢ per pound since April, 1935. Aluminum Company denies that it exercised any power to fix oppressive or unreasonable prices in making said price advance, denies that it has any such power and denies that the said advance of 1¢ per pound on March 1, 1937, was arbitrary or unwarranted. Aluminum Company admits that it had increased its production of virgin aluminum from 119,295,000 pounds valued at $22,070,000 in 1935 to 224,929,000 pounds valued at $41,-[fol. 605] 612,000 in 1936 and had experienced an increase in earnings from $9,571,206, or 55¢ per share of common stock after current preferred dividend requirements in 1935, to $20,866,936, or $8.65 per share of common stock after current preferred dividend requirements in 1936. These earnings are in no respects excessive. From the time of the issue of the present outstanding common stock of Aluminum Company in 1925 to the present date the company has never been able to pay any cash dividends on its common stock and has paid no such cash dividends. So far as the dividends on its preferred stock are concerned, beginning in

1932, it was obliged to omit or reduce the dividends on its preferred stock from the agreed amount of 6% per annum in such manner that by July 1, 1936, $16.25 of unpaid preferred stock dividends had accumulated on each outstanding share of preferred stock. These unpaid accrued preferred dividends have not all been paid but, on the contrary, at present there are unpaid accrued dividends on each share of outstanding prefered stock amounting to $9.00 per share, which on July 1, 1937 will be reduced to $6.75 per share. The said price advance of 1¢ per pound made on March 1, 1937, was an advance of approximately 5% in the selling price, such advance being insufficient to cover the additional cost of labor and materials which has arisen in the past year or two and such advance being much less than the advances made in the prices of many other metals and commodities. Aluminum Company denies that every indication pointed to an all-time high production for [fol. 606] 1937 or to a substantial increase in earnings over those of 1936.

102. Aluminum Company denies each and every averment contained in this paragraph, this denial, in so far as the same relates to five contracts of Aluminum Company or its subsidiary made many years ago, being subject to the averments contained in paragraph 56, 86, 87, 88 and 90 of this answer.

103. Aluminum Company denies the averments contained in this paragraph. The fact is that the aluminum industry in all its branches is open to those who may desire to enter therein and that competition therein does exist and that the benefits therefrom do accrue to the public and that the interstate and foreign trade and commerce in aluminum and in the products manufactured therefrom are wholly unrestrained and that there is no existing monopoly therein. Neither Aluminum Company nor the other defendants are continuing any practices, contracts, relations, combinations or conspiracies in any way restraining or monopolizing trade or commerce and should not be in any manner enjoined or restrained as claimed in this paragraph nor should they be required to make divestiture of any of their properties or holdings to terminate any monopolistic control or to effect competitive conditions in the industry. In fact there is no such monopolistic control and competitive conditions in the industry in fact exist.

104. Further answering the petition, defendant says: Fifty years ago when Aluminum Company began business, [fol. 607] aluminum was a little known and little used metal which was extracted in small quantities and at great expense. It sold for about $8 per pound. Aluminum Company acquired the Charles M. Hall patents covering a process which was developed by Aluminum Company in such manner as to produce aluminum cheaply and in large and commercial quantities. This process for many years past has been followed all over the world. This new and untried metal had to come into competition with iron, steel, copper, brass, zinc and other well-known metals and substances, the usefulness of which had been demonstrated by long and wide experience. To show the usefulness and advantages of aluminum, Aluminum Company had to go into the fabrication of the raw material into many finished forms. There was no market for the metal in any form. Aluminum Company created its own market where none had existed before. It is still necessary for Aluminum Company to continue fabricating aluminum in order that the metal shall hold its place in the market and shall not be displaced by other metals or substances. The presence, supply and availability of aluminum in this country are due to these efforts of the Aluminum Company in the creation of this industry, trade and commerce and making aluminum a competitor of other metals and substances for many uses. Under United States patents Aluminum Company had a lawful monopoly of the manufacture of aluminum until 1909 when the patents expired. By that time Aluminum Company had a large experience in the business, well-equipped plants, an efficient personnel, including an active [fol. 608] and capable sales organization and an excellent reputation in the trade. The manufacture of virgin aluminum is a very expensive business in which to embark, requiring a large capital investment for plants which are not only costly to build but require constant and large additional expenditures to keep them abreast of the times. For these reasons and not because of any monopolization or restraint of trade or other wrongful acts of Aluminum Company (none of which have been committed) there has never been an attempt to manufacture virgin aluminum in the United States in competition with Aluminum Company, until the attempt in 1914 by certain French interests

which did not result in the completion of a plant on account of the World War as hereinbefore in paragraph 13 of this answer set forth. By hard, long-continued effort Aluminum Company has greatly improved the quality of aluminum in crude and finished forms, has constantly developed and increased its usefulness and has passed on to the public many substantial benefits not only in the advantages of the use of this serviceable metal in many forms but also by large and repeated reductions in the price thereof which is now 20¢ per pound. During its existence Aluminum Company has purchased bauxite, water powers and other properties and has constructed or invested in plants and facilities for the purpose of increasing the output, improving the quality and cheapening the cost of its various products. Not one of these acts has been performed for the purpose of monopolizing or in any manner restraining trade or commerce in the United States or elsewhere.

[fol. 609] Aluminum Company denies that the petitioner is entitled to the relief prayed for in the prayer of the petition or any further relief.

Wherefore Aluminum Company prays that it may be hence dismissed with its costs and charges in this behalf unjustly sustained.

Aluminum Company of America, by Roy A. Hunt, President. Charles E. Hughes, Jr., Leighton H. Surbeck, Hughes, Richards, Hubbard & Ewing, Address: 100 Broadway, New York, N. Y.; William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Smith, Buchanan, Scott & Ingersoll, Address: 1025 Union Trust Building, Pittsburgh, Pa., Solicitors for Aluminum Company of America, Defendant

[fol. 610] State of Pennsylvania,
County of Allegheny, ss:

Before me, the undersigned authority, a Notary Public in and for said State and County, personally appeared Roy A. Hunt, who, being by me duly sworn according to law, deposes and says that he is President of Aluminum Company of America, one of the defendants in the above entitled case and its agent duly authorized in this behalf, that he has knowledge of the averments set forth in the foregoing

answer and that the said averments are true to the best of his knowledge, information and belief.

Roy A. Hunt.

Sworn to and subscribed before me this 15th day of June, 1937. Clara I. Houston, Notary Public. My commission expires January 22, 1941. (N. P. Seal.)

[fol. 611] GOVERNMENT'S EXHIBIT 14

[fol. 612] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Equity No. 85—73

UNITED STATES OF AMERICA

v.

ALUMINUM COMPANY OF AMERICA et al.

ANSWER OF THE UNITED STATES ALUMINUM COMPANY

To the Honorable the Judges of said Court:

The United States Aluminum Company, defendant above named (hereinafter called "defendant"), answering the petition of the United States of America, says:

Defendant hereby joins in and adopts the answer filed in the above entitled case by Aluminum Company of America and makes each and every denial, admission and averment therein contained with the same force and effect as if said denials, admissions and averments contained in the answer of Aluminum Company of America were embodied in full in this answer as the denials, admissions and averments of this defendant.

[fol. 613] Wherefore defendant prays that it may be hence dismissed with its costs and charges in this behalf unjustly sustained.

The United States Aluminum Company, by Paul J. Urquhart, Vice President. Charles E. Hughes, Jr., Leighton H. Surbeck, Hughes, Richards, Hubbard & Ewing, Address: 100 Broadway, New York, N. Y.; William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Smith, Buchanan, Scott & Ingersoll, Address: 1025 Union Trust Building, Pittsburgh, Pa., Solicitors for The United States Aluminum Company, Defendant.

[fol. 614] STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, a Notary Public in and for said State and County, personally appeared Paul J. Urquhart who, being by me duly sworn according to law, deposes and says that he is Vice President of The United States Aluminum Company, one of the defendants in the above entitled case and its agent duly authorized in this behalf, that he has knowledge of the averments set forth in the foregoing answer and in the above mentioned answer of Aluminum Company of America and that the averments of said answers are true to the best of his knowledge, information and belief.

Paul J. Urquhart.

Sworn to and subscribed before me this 15th day of June, 1937. Clara I. Houston, Notary Public. My commission expires January 22, 1941. (N. P. Seal.)

[fol. 615] GOVERNMENT EXHIBIT 31

[fol. 616] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Equity No. 85—73

UNITED STATES OF AMERICA

v.

ALUMINUM COMPANY OF AMERICA et al.

ANSWER OF J. R. D. HUSTON

To the Honorable the Judges of said Court:

J. R. D. Huston, defendant above named (hereinafter called "defendant"), answering the petition of the United States of America, says:

Defendant hereby joins in and adopts the answer filed in the above entitled case by Aluminum Company of America and makes each and every denial, admission and averment therein contained with the same force and effect as if said denials, admissions and averments contained in the

answer of said company were embodied in full in this answer as the denials, admissions and averments of this defendant.

[fol. 617] Wherefore defendant prays that he may be hence dismissed with his costs and charges in this behalf unjustly sustained.

J. R. D. Huston. Charles E. Hughes, Jr., Leighton H. Surbeck, Hughes, Richards, Hubbard & Ewing, Address: 100 Broadway, New York, N. Y.; William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Smith, Buchanan, Scott & Ingersoll, Address: 1025 Union Trust Building, Pittsburgh, Pa.; Solicitors for J. R. D. Huston, Defendant.

[fol. 618] STATE OF PENNSYLVANIA,
County of Allegheny, ss:

J. R. D. Huston, being duly sworn, deposes and says that he is the defendant above named and that the foregoing answer and the above mentioned answer filed by Aluminum Company of America are true to the best of his knowledge, information and belief.

J. R. D. Huston.

Sworn to before me this 15th day of June, 1937. Clara I. Houston, Notary Public. My commission expires January 22, 1941. (N. P. Seal.)

[fol. 619] ALUMINUM COMPANY EXHIBIT 1

Law Offices of Nash & Nash,
Nanitowoc Savings Bank Building,
Manitowoc, Wisconsin

May 25, 1937.

Mr. William Watson Smith, Smith, Buchanan, Scott & Ingersoll, Union Trust Building, Pittsburgh, Pennsylvania.

Re United States vs. Aluminum Company of America

DEAR MR. SMITH:

Aluminum Goods Manufacturing Company, one of the defendants in the above action, will be represented by Messrs.

Baldwin, Todd & Young as attorneys of record. As you recall, I was in Mr. Baldwin's office in New York on Monday, May 17th, when you advised both of us that Mr. Jackson, Assistant Attorney General, had agreed that defendants in the case need not appear and answer within the twenty days allowed by law.

As you stated to Mr. Baldwin and me, Mr. Jackson authorized you to inform counsel for all the defendants in the New York suit that, after he had conferred with the Attorney General, he, Mr. Jackson, would advise you what was to be done as to stipulating to enlarge the time for appearance and answer by all defendants, and that for a few days after Mr. Jackson had so advised you, all the defendants would have an opportunity to appear and answer without being in default and no step would be taken against them by the Government during that period. While Mr. Baldwin and I are entirely confident that the Government attorneys will stand by this arrangement, and in reliance on it have not prepared or filed any answer for our client, we would rather like to know whether any written stipulation, extending our time to answer, has been or will be furnished by the Government. If you have learned what the Government intends to do in this connection, please advise me.

Very truly yours, A. L. Nash.

ALN:H.

[fol. 620]

May 26, 1937.

Mr. Robert H. Jackson, Assistant Attorney General, Department of Justice, Washington, D. C.

DEAR MR. JACKSON:

You will recollect that, on the morning of Monday, May 17, I had a conversation with you over the telephone from New York City, you being then at Jamestown, New York. Among other things, I told you that counsel for the Aluminum Company of America were ready to co-operate with you in procuring an early final decree in the application for an injunction before Judge Gibson in Pittsburgh so as to expedite any right of appeal therefrom, provided that the United States would enter a stipulation in its suit against the Aluminum Company of America and others in the Southern District of New York either staying the proceedings or enlarging the time to appear and answer, so far as

the defendants represented by our firm were concerned, pending Judge Gibson's final decree upon the application for an injunction and pending the decision upon any appeal from such final decree and for a reasonable time thereafter so as to give opportunity to enter appearances and file answers if any of the defendants desired to do so. You replied that you would be unable to give me an answer on the question of the stipulation until you had discussed the subject with the Attorney General whom you would be unable to see until Thursday, May 20, on which day you would see [fol. 621] the Attorney General and then advise me promptly as to the stipulation. You also informed me that, until you had so advised me and for a few days thereafter, no step whatever need be taken by any defendant in the New York suit and no step whatever would be taken in the New York suit against any of the defendants whom we represent or any other defendants so that there would be opportunity for all defendants to appear and answer, if they desired to do so, and that we could so advise the lawyers for the other defendants, which advice I gave to the other lawyers on May 17. I have heard nothing from you since our conversation of May 17 and I am writing to inquire whether or not you have talked with the Attorney General and what is to be done about the stipulation. The lawyers for other defendants are inquiring of us as to the situation. I have received a letter dated May 25th from Mr. A. L. Nash of Manitowoc, Wisconsin, counsel for the Aluminum Goods Manufacturing Company, a copy of which letter and a copy of my reply thereto are enclosed herewith.

We represent the following defendants in the New York suit: Aluminum Company of America, its 100% subsidiaries, its officers and directors, including Andrew W. Mellon, former director (George G. Allen, former director, being represented by other counsel); The Coalesced Company; The Aloxite Corporation; Ailsa Mellon Bruce; Paul Mellon; Sarah Mellon Scaife; The Union Trust Company of Pittsburgh, Richard K. Mellon, Jennie King Mellon and Sarah Mellon Scaife, as executors of the Estate of R. B. Mellon, deceased.

From my conversation with you on May 17th and from [fol. 622] statements made by you in oral argument at the preliminary injunction hearing before Judge Gibson in Pittsburgh, I understand that the law officers of the United

States do not intend to proceed with the suit in the Southern District of New York against the other defendants unless they can also proceed therein against the Aluminum Company of America. Under these circumstances, as I stated to you in our conversation of May 17, until it is known whether or not Judge Gibson's position will be affirmed on appeal, it seems a useless trouble and expense for some sixty defendants to enter appearances and file answers in the New York suit.

We realize that you are carrying a heavy burden of work and have no wish to hurry you in any way but we point out, first, that the summer vacation season is approaching rapidly and, if you are interested in obtaining a final decree in the proceeding before Judge Gibson, prompt action should be taken to get the case into shape for presentation to him. Second, and of much greater importance from our standpoint, you will observe that, relying on the assurances you gave to me over the telephone, we have allowed all of the defendants whom we represent to become in apparent default for lack of appearances and answers in the New York suit, and the same thing has been done by lawyers for other defendants. In a case involving issues of such maghitude, we do not like to allow our clients to be in apparent default resting upon verbal assurances given in a telephone conversation. There is always the possibility of death or some other contingency which might arise to our great embarrassment. Therefore, I suggest that, until you have come to some conclusion as to your course of procedure, fol. 623 there should be a stipulation by the United States filed in the New York suit which will enlarge the time for appearance and answer therein in such manner as to remove any danger of any defendant being held in default for lack of appearance and answer. Will you be kind enough to advise me promptly as to your views in this matter. We shall be glad to forward for your approval a form of stipulation. I think that we need a stipulation in any event because it will take considerable time for us to prepare answers for the numerous defendants represented by us in the New York suit and have them signed by the defendants if it becomes necessary to file such answers.

Yours sincerely, William Watson Smith.

WWS M.
Encs.

[fol. 624] May 26, 1937.

Mr. A. L. Nash, Manitowoc Savings Bank Building, Manitowoc, Wisconsin.

DEAR MR. NASH:

I have your letter of May 25th. On the afternoon of Monday, May 17, I talked with you and Mr. Baldwin in the office of Messrs. Baldwin, Todd & Young in New York City and advised you of my conversation over the telephone on the morning of that day with Mr. Robert H. Jackson, Assistant Attorney General, he then being at Jamestown, New York. Without attempting to give my entire conversation with Mr. Jackson, I told Mr. Baldwin and you that I had said to Mr. Jackson that counsel for the Aluminum Company of America were ready to co-operate with him in procuring an early final decree in the application for an injunction before Judge Gibson in Pittsburgh so as to expedite any right of appeal therefrom; that I asked Mr. Jackson whether such co-operation would be of value to the United States and he said that it would. I then said to Mr. Jackson that, if on final hearing before Judge Gibson, the latter should change his mind and not give a decree like the preliminary injunction or if on appeal any injunction entered on final decree should be reversed, the Aluminum Company of America and other defendants (a number of whom we represented) in the suit by the United States in the District Court of the United States for the Southern District [fol. 625] of New York would be in default for lack of appearances and answers and, in any event, some of the defendants represented by our firm who were not protected by Judge Gibson's preliminary injunction would be in such default and that I did not think that any of the defendants could afford to be in that position. Consequently, I told Mr. Jackson that, if counsel for Aluminum Company of America co-operated in the matter of expediting Judge Gibson's final decree or the application for an injunction, it would be on the basis that the United States would enter a stipulation in its New York suit against the Aluminum Company of America and others either staying the proceedings or enlarging the time to appear and answer, so far as all our clients were concerned, pending Judge Gibson's final decree upon the application for an injunction and pending the decision upon any appeal from such final decree

and for a reasonable time thereafter so as to give opportunity to enter appearances and file answers if any of the defendants desired to do so. Mr. Jackson replied that he would be unable to give me an answer on the question of the stipulation until he had discussed the subject with the Attorney General whom he would be unable to see until Thursday, May 20, on which day he would see the Attorney General and then advise me promptly. I said that the Aluminum Company of America and other defendants by reason of this delay would be in default for lack of appearances and answers and asked Mr. Jackson whether he would not agree that, pending his conference with the Attorney General and for a few days after he, Mr. Jackson, had advised me what was to be done about the stipulation, there should be no proceeding whatever in the United States [fol. 626] Court for the Southern District of New York against any of the defendants represented by our firm so that such defendants would have opportunity to appear and answer if they desired to do so. Mr. Jackson said he so agreed. I then said to him that there were a number of defendants in the case whom we did not represent and whose lawyers, I felt sure, would be anxious to avoid any question of default and would ask me what the Aluminum Company of America proposed to do in the situation. I asked Mr. Jackson whether he would not authorize me to say to the lawyers representing all the other defendants that, until he, Mr. Jackson, had his conference with the Attorney General and advised me what was to be done about the stipulation and for a few days thereafter, no step whatever need be taken by any defendant in the New York suit and that there would be no step taken against any of them by the Government during that period so that there would be opportunity for all defendants to appear and answer if they desired to do so. Mr. Jackson replied that he authorized me so to advise the lawyers for all other defendants and I have done so.

Since my conversation of May 17, I have heard nothing from Mr. Jackson and do not know whether or not he has had opportunity to confer with the Attorney General. If a stipulation is entered in the New York suit with respect to the defendants whom our firm represents, we shall suggest to Mr. Jackson that it be made broad enough to include all defendants who wish to take advantage of such stipulation instead of appearing and answering at present. As

soon as I hear from Mr. Jackson following his conference with the Attorney General, I will advise you and the law-
[fol. 627] yers for the other defendants promptly as to the situation.

Yours sincerely, William Watson Smith.

WWS-MB.

[fol. 628] Department of Justice,

Washington, D. C.

Address reply to "The Attorney General" and refer to initials and number WB, 60-13-0.

May 28, 1937.

William Watson Smith, Esq., Smith, Buchanan, Scott & Ingersoll, Union Trust Building, Pittsburgh, Pennsylvania.

Dear Mr. Smith:

It is my understanding from your letter of May 26, 1937, that you do not propose to cooperate with us in procuring an early final decree from Judge Gibson in Pittsburgh so as to expedite any right of appeal therefrom, unless the United States will stipulate in its suit against the Aluminum Company of America and others in the Southern District of New York either that that proceeding be stayed or that defendants' time to answer be enlarged pending Judge Gibson's final decree and an appeal therefrom. This does not fully accord with my understanding of the conversation which we had over the telephone May 17, 1937.

I regret to advise you that we cannot agree upon a stipulation of the character proposed by you. However, we are willing to consent to a reasonable enlargement of your time to answer. Inasmuch as the petition was filed April 23, 1937, defendants already have had a substantial period in which to make preparations for filing an answer. We have consented to extensions as to certain defendants represented by Messrs. Milbank, Tweed, Hope & Webb. As to all other defendants we will consent to an enlargement of their time to answer until June 17, 1937, which is 20 days from today's date. You will, of course, recognize that all defendants, including Aluminum Company of America and its 100 per cent owned subsidiaries and its officers and directors, have not been and can not be released, by Judge

Gibson's orders, from their obligation to file answers in the New York suit in accordance with the subpœnas issued by the District Court for the Southern District of New York. [fol. 629] In view of our desire to expedite every phase of this litigation, we feel that a stipulation extending the time of such defendants until June 17 should amply satisfy your requirements and make unnecessary any further extension of defendants' time to answer.

Very truly yours, Robert H. Jackson, Assistant Attorney General.

[fol. 630] June 1, 1937.

Mr. Robert H. Jackson, Assistant Attorney General, Department of Justice, Washington, D. C.

DEAR MR. JACKSON:

An earlier reply to your letter of May 28 has been prevented by my absence from the city. We wish to correct the impression you hold, namely, that unless the United States grants the desired stipulation, we shall not co-operate with you in procuring an early final decree from Judge Gibson upon the application of the Aluminum Company of America for an injunction. You are under a misapprehension on this point. Notwithstanding the failure of the United States to stipulate, we will co-operate with you in every way to obtain an early final decree upon the application for an injunction.

We are reluctant to undertake the laborious task of preparing answers in the New York suit for the defendants we represent unless that course is necessary. The situation as we see it is this: If Judge Gibson should enter a final decree like the preliminary injunction and if that decree should be affirmed on appeal, we feel sure that you would not wish to proceed in the New York suit against any of the defendants whether or not protected by the injunction. If, on the other hand, Judge Gibson's final decree should be entered and reversed on appeal, it would then become necessary for [fol. 631] all the defendants we represent to appear and answer. Are you not willing to agree to enlarge the time for filing answers in the New York suit so far as concerns only those defendants represented by our firm until you or the Attorney General shall give twenty days' written notice to our firm of the withdrawal of that arrangement?

This would put you in position to withdraw the arrangement at any time. We do not believe it would delay the proceedings in any way. We should be entirely willing to take a letter from you covering the point without having any formal stipulation filed in the New York suit. Kindly advise me in regard to this suggestion at your early convenience. You will, of course, understand that whether or not you adopt this suggestion we stand ready to co-operate with you in every way in obtaining an early final decree upon the injunction application as hereinbefore set forth.

Yours sincerely, William Watson Smith.

WWS-MB.

[fol. 632] Department of Justice,

Washington, D. C.

Address reply to "The Attorney General" and refer to initials and number WB, 60-13-0.

June 4, 1937.

William Watson Smith, Esq., Smith, Buchanan, Scott & Ingersoll, Union Trust Building, Pittsburgh, Pennsylvania

Re United States v. Aluminum Company of America, et al.

Dear Mr. Smith:

We have considered the proposal in your letter of June 1, 1937, and we wish to advise you that we cannot agree upon the indefinite postponement of the New York suit which you have suggested.

As stated in our letter of May 28, 1937, we are willing to consent to an additional enlargement of your time to answer until June 17, 1937, which is 55 days after the filing of suit April 23, 1937.

We are confident that we may be permitted to proceed with the New York case, and we believe that any further enlargement of time to answer might defeat our desire to expedite this proceeding.

Very truly yours, Robert H. Jackson, Assistant Attorney General.

[fol. 633] June 17, 1937.

Mr. Robert H. Jackson, Assistant Attorney General, Department of Justice, Washington, D. C.

DEAR MR. JACKSON:

Since you have declined to grant us any further extension of time for filing answers, we filed today in the suit brought by the United States against Aluminum Company of America and others in the Southern District of New York answers for the following named defendants: Aluminum Company of America, The Aluminum Cooking Utensil Company, Aluminum Ore Company, Aluminum Seal Company, Alcoa Power Company, Limited, Alton and Southern Railroad, Bauxite and Northern Railway Company, Carolina Aluminum Company, Cedars Rapids Transmission Company, Limited, Knoxville Power Company, Louisiana Terminal Company, Massena Securities Corporation, The Massena Terminal Railroad Company, Nantahala Power and Light Company, Ocean Dominion Steamship Corporation, The Republic Mining and Manufacturing Corporation, The St. Lawrence River Power Company, St. Louis and Ohio River Railroad, Surinaamsche Bauxite Maatschappij, The United States Aluminum Company, The Coalesced Company, The Aloxite Corporation, Ailsa Mellon Bruce, David K. E. Bruce, George H. Clapp, Safford K. Colby, Arthur V. Davis, J. J. Demskie, C. B. Fox, George R. Gibbons, Roy A. Hunt, J. R. D. Huston, C. L. Lycette, Andrew W. Mellon, Paul Mellon, Richard K. Mellon, The Union Trust Company of Pittsburgh as executor of the will of R. B. Mellon, deceased, [fol. 634] Richard K. Mellon as such executor, Jennie King Mellon as such executor, Sarah Mellon Scaife as such executor, Sarah Mellon Scaife, George J. Stanley, Paul J. Urquhart, Irving W. Wilson and Robert E. Withers. This having been done, we think that the preliminary injunction recently granted by Judge Gibson in the 1912 Pittsburgh suit should preserve the status quo pending the final hearing on the injunction application of the Aluminum Company of America and the decision of any appeal therefrom.

We are sending you today, by express, ten printed copies of each of the answers mentioned above. If you need a few additional copies of each and will so advise us, I think we can let you have them. We are also sending you, by express, for the convenience of yourself and your asso-

ciates, ten printed copies of the complete record in the 1912 Pittsburgh proceeding which are complete to date and we assume will remain complete until June 23. Therefore we have noted on the cover that the record is to June 23. We are sending to Mr. Rowland today copies of the printed record for delivery to the three Circuit Judges.

We have been unable to obtain an answer from Edwin S. Fickes who for years has suffered severely with hay fever and asthma and is now in Nova Scotia, Canada. We have communicated with him on the subject and expect to have his answer for filing at an early date although we are unable to specify the exact date at present. We have been unable to obtain an answer from Winthrop C. Neilson who has been for many weeks so seriously ill that it is impos- [fol. 635] sible to discuss business with him, much less have him file an answer. It may be that some time will elapse before the subject can be discussed with Mr. Neilson. Under the circumstances we request you to give us additional time for obtaining the answers of these two defendants whom we represent. We will undertake to obtain them as soon as it is possible to do so. It has been impossible for us to obtain them up to this time.

Yours sincerely, William Watson Smith.

WWS-MB.

[fol. 636] Department of Justice,

Washington, D. C.

Address reply to "The Attorney General" and return to initials and number, WB, 60-13-0.

June 19, 1937.

William Watson Smith, Esq., Smith, Buchanan, Scott & Ingersoll, Union Trust Building, Pittsburgh, Pennsylvania.

Re United States v. Aluminum Company of America et al.

DEAR MR. SMITH:

We wish to thank you for the ten printed sets of answers and the ten printed copies of the record which you sent to us. Undoubtedly through inadvertence, the answer of Aluminum Manufactures, Inc. was not included in the package received by the Department. It will be appreciated if you will send us ten additional copies of the an-

swer filed by Aluminum Company of America, and ten copies of the answer of Aluminum Manufactures, Inc.

In view of your representations regarding defendants, Edwin S. Fickes and Winthrop C. Neilson, we are willing to stipulate that their answers be filed twenty days from today's date, namely, July 9, 1937.

Very truly yours, Robert H. Jackson, Assistant Attorney General.

[fol. 637] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the above Court:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following, and no other papers and exhibits, to-wit:

1. The docket entries;
2. Petition of United States of America, filed May 16, 1912;
3. Answer of Aluminum Company of America, filed June 1, 1912;
4. The consent decree entered June 7, 1912;
5. Petition of Aluminum Company of America for modification of the aforementioned consent decree, filed October 25, 1922;
6. The supplemental decree entered October 25, 1922;
7. Petition of Aluminum Company of America, filed April 29, 1937, immediately following which should appear as an exhibit the petition in the matter of United States of America v. Aluminum Company of America et al., filed April 23, 1937, in the District Court of the United States for the Southern District of New York;
8. The order of court entered April 29, 1937;
9. Bond of Aluminum Company of America, approved and filed April 29, 1937;
10. Special appearance of Robert H. Jackson and Walter L. Rice for Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken,

[fol. 638] Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney, entered May 6, 1937;

11. Motion of Robert H. Jackson and Walter L. Rice on behalf of Homer S. Cummings, Attorney General, and others to quash service, set aside writ, dismiss defendant's petition and vacate restraining order, filed May 7, 1937;

12. The order of court entered May 7, 1937;

13. The preliminary injunction entered May 14, 1937;

14. Bond of Aluminum Company of America, approved and filed May 14, 1937;

15. Opinion of court, including findings of fact and conclusions of law, filed May 14, 1937;

16. The order of court entered May 14, 1937, refusing motion of Robert H. Jackson and Walter L. Rice on behalf of Homer S. Cummings, Attorney General, and others to quash service, set aside writ, dismiss defendant's petition and vacate restraining order, filed May 7, 1937;

17. Answer of Homer S. Cummings, Attorney General, and others, filed June 3, 1937;

18. Expediting certificate of Attorney General, filed June 8, 1937;

19. The order of court on said expediting certificate entered June 14, 1937;

20. Objections of Aluminum Company of America, filed June 23, 1937;

21. Requests of Aluminum Company of America for findings of fact and conclusions of law, filed June 23 and June 29, 1937;

22. Stipulation of counsel concerning substitution of copies of certain portions of the record for the original papers, filed June 28, 1937;

23. Opinion of Statutory Expediting Court, filed July 21, 1937;

24. Final decree of Statutory Expediting Court, filed July 27, 1937;

25. Exception noted to Aluminum Company of America July 27, 1937;

[fol. 639] 26. Petition of Aluminum Company of America for appeal, filed July 27, 1937;

27. Assignment of errors of Aluminum Company of America, filed July 27, 1937;

28. Statement of jurisdiction required by Rule 12 of the Supreme Court of the United States, filed July 27, 1937;

29. Order of court permitting appeal, entered July 27, 1937;

30. Appeal bond of Aluminum Company of America and order of court approving same, entered and filed July 27, 1937;

31. Citation on appeal, issued July 27, 1937;

32. Proof of service of appeal papers on appellees, filed July 27, 1937;

33. Notice of lodgement of narrative statement of evidence and acceptance of service thereof, dated July 27, 1937;

34. Narrative statement of evidence, together with exhibits as therein indicated, as filed and approved by order of court dated July 27, 1937;

35. This præcipe for transcript of record and order of court approving same.

Said transcript to be prepared as required by law and the rules of this Court and the Supreme Court of the United States and to be filed in the Office of the Clerk of the Supreme Court of the United States at Washington, D. C., on or before the 4th day of September, 1937.

Dated July 27, 1937.

William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Smith, Buchanan, Scott & Ingersoll, Solicitors for Aluminum Company of America.

And now, this 27th day of July, 1937, we hereby consent to the above præcipe and agree that the record prepared [fol. 640] as above requested may be filed in the Office of the Clerk of the Supreme Court of the United States as the record in this cause.

Walter E. Rice, Special Assistant to the Attorney General, as Solicitor for the United States of America, Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Walter L. Rice, Special Assistant to the Attorney General, John W. Aiken, Special Assistant to the Attorney General, Wendell Berge, Special Assistant to the Attorney General, F. Gwyn Harper, Jr., Special Attorney, N. A. Townsend, Jr., Special Attorney, and Lamar Hardy, United States Attorney.

[fol. 640½] Order

And now, July 27, 1937, upon motion of counsel for the appellant, counsel for the appellees consenting, the within præcipe for transcript for record is hereby approved.

J. Whitaker Thompson, Circuit Judge.

[fol. 641] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 642] In Supreme Court of the United States

Statement Under Rule 13 (9)—Filed August 2, 1937

1. The appellant adopts its assignment of errors as a statement of the points upon which it intends to rely in the prosecution of its appeal.

2. The parts of the record which the appellant thinks necessary for the consideration of the foregoing questions are those set forth in the præcipe for transcript of record heretofore filed in this case, with the exception of items 9 and 14 thereof, both being bonds filed by Aluminum Company of America, and the pleadings attached to item 23, being the Opinion of the Court, the said pleadings appearing elsewhere in the record.

William Watson Smith, Frank B. Ingersoll, Leon E. Hickman, Solicitors for Aluminum Company of America.

August 2, 1937.

And now, this 2d day of August, 1937, we acknowledge service of a copy of the foregoing statement and agree that the record may be printed by the Clerk as above indicated.

Walter L. Rice, Special Assistant to the Attorney General, as Solicitor for Appellees.

[fol. 643] [File endorsement omitted.]

Endorsed on cover: File No. 41,762. W. Pennsylvania, D. C. U. S. Term No. 281. Aluminum Company of America, Appellant, vs. The United States of America. Filed August 2, 1937. Term No. 281, O. T., 1937.

FILE COPY

Office - Supreme Court, U. S
FILED
AUG 2 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 281

ALUMINUM COMPANY OF AMERICA,
Appellant,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

STATEMENT AS TO JURISDICTION.

WILLIAM WATSON SMITH,
FRANK B. INGERSOLL,
LEON E. HICKMAN,
Counsel for Appellant.

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TABLE OF CASES CITED.

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STATUTES CITED.

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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NOVEMBER TERM, 1912.

IN EQUITY.

No. 159

UNITED STATES OF AMERICA

vs.

ALUMINUM COMPANY OF AMERICA.

STATEMENT OF JURISDICTION UNDER RULE 12 (1) OF THE SUPREME COURT OF THE UNITED STATES.

The appellate jurisdiction of the Supreme Court of the United States over this case is invoked under the so-called Expediting Act of February 11, 1903, c. 544, § 2, 32 Stat. 823, as amended by the Act of March 3, 1911, c. 231, § 291, 36 Stat. 1167 (15 U. S. C. A. § 29), and Section 238 of the Judicial Code, as amended (28 U. S. C. A. § 345). The applicability of these statutory provisions to a case such as this is shown by *Swift & Company v. United States*, 276 U. S. 311, 321-323 (1928, opinion by Mr. Justice Brandeis), and *United States* v. *California Cooperative Canneries*, 279 U. S. 553, 555-559 (1929, opinion by Mr. Justice Brandeis).

The validity of no statute is involved.

The date of the final decree sought to be reviewed is July 27, 1937, and the application for appeal is presented on the same day.

The case arises under the anti-trust laws. The United States by petition in equity has secured a decree in the above captioned case under date of June 7, 1912, enjoining present and prospective violations of the anti-trust laws. Later, on April 23, 1937, it filed another petition in equity in a different court, namely, the District Court of the United States for the Southern District of New York, against Aluminum Company of America, and others, seeking equitable relief against the parties defendant because of alleged violations of the anti-trust laws. The Aluminum Company of America thereupon filed a petition, in the earlier equity action in this Court, praying for an injunction to restrain enumerated law officers of the United States from prosecuting in the New York court the second action against the Aluminum Company of America, its 100% subsidiaries, or its present or former officers and directors in their official capacities, such petition for injunctive relief being predicated upon the contention that the second action in equity by the United States embraced subject matter and issues substantially identical with those presented in the first suit. Pursuant to the prayer of the petition a preliminary injunction was granted, but was vacated on final hearing pursuant to the terms of a final decree entered July 27, 1937, wherein the petition of Aluminum Company of America was dismissed, an order of April 27, 1937, wherein said Government counsel had been named as parties defendant in the original equity action in this Court, and the preliminary injunction, were vacated and the injunctive relief prayed for was denied.

The substantial nature of the questions involved is shown by the opinion of the Circuit Judges (Davis, Thompson

and Biggs, JJ.) sitting as a statutory Expediting District Court of the United States for the Western District of Pennsylvania pursuant to an expediting certificate filed by the Attorney General of the United States in the above captioned case under authority conferred on him by the aforementioned Expediting Act of 1903, in which opinion a final injunction was refused; and by the earlier opinion of the Court (Gibson, D. J.) granting a preliminary injunction; as well as by the expediting certificate filed by the Attorney General at the above number and term.

Copies of the aforementioned opinions are attached hereto.

WILLIAM WATSON SMITH,
FRANK B. INGERSOLL,
LEON E. HICKMAN,
Solicitors for Aluminum Company of America.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

NOVEMBER TERM, 1912.

In Equity.

No. 159.

UNITED STATES OF AMERICA, *Petitioner*,

vs.

ALUMINUM COMPANY OF AMERICA, *Defendant*.

Before Davis, Thompson and Biggs, Circuit Judges, Comprising Special Expediting Court.

Opinion.

THOMPSON, *Circuit J.*:

This cause comes before us as an Expedition Court, composed in accordance with the provisions of section 1 of the Expedition Act (15 U. S. C. A. 28) and in response to a certificate filed by the Attorney General that the cause is a suit in equity in which the United States is complainant, which has become of general public importance. The following facts led up to the formation of the Court:

On April 23, 1937 the Attorney General on behalf of the United States filed suit in the District Court for the Southern District of New York under the Sherman Antitrust Act (15 U. S. C. A. 1, 2, 4) against Aluminum Company of America and sixty-two other defendants, charging monopoly and conspiracies to restrain and monopolize trade and commerce in aluminum and related commodities. A copy of the petition is set out in full in the appendix to this opinion. On April 29, 1937, Aluminum Company of America filed a petition in the District Court for the Western District of Pennsylvania in an old suit entitled "United

States of America, Petitioner v. Aluminum Company of America, Defendant," alleging that the subject matter and issues adjudicated in this old Pennsylvania suit were identical with the subject matter and issues in the New York suit. The Pennsylvania suit had terminated in a consent decree filed June 7, 1912. By order dated April 29, 1937 United States District Judge Gibson made the Attorney General and seven other members of the Department of Justice parties defendants in the old Pennsylvania suit, restrained them from proceeding in the New York suit and ordered them to show cause why a preliminary injunction should not issue. On May 6, 1937 government counsel entered a special appearance in the District Court for the Western District of Pennsylvania, and moved to quash service, to set aside the Marshal's returns, to dismiss Aluminum Company of America's petition and to vacate the restraining order. On May 14, 1937 Judge Gibson issued a preliminary injunction restraining the Attorney General and his assistants from proceeding with the New York suit. On June 8, 1937 the Attorney General filed an expediting certificate in the District Court for the Western District of Pennsylvania and on June 14, 1937 this Expedition Court was formed, subject to the right of the defendants to object to the jurisdiction of the Court. On June 17, 1937 answers to the suit in the District Court for the Southern District of New York were filed by the defendants in that suit. We set out in the appendix the most comprehensive of these answers, that of the Aluminum Company of America.

This Court was formed and its jurisdiction properly invoked in conformity with section 1 of the Expediting Act which provides:

> "In any suit in equity brought in any district court of the United States under sections 1 to 7, inclusive, or section 15 of this chapter or any other statutory provisions having a like purpose enacted after February 11, 1903, or that may be enacted wherein the United States is complainant, the Attorney General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such

clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select; or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges sitting in such case shall be equally divided in opinion as to the decision or disposition of said cause, or in the event that a majority of said judges shall be unable to agree upon the judgment, order, or decree finally disposing of said case in said court which should be entered in said cause, then they shall immediately certify that fact to the Chief Justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the Chief Justice shall be immediately transmitted to the clerk of the district court in which said cause is pending, and shall be entered upon the minutes of said court. Thereupon said cause shall at once be set down for reargument and the parties thereto notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof."

We could make a preliminary determination as to whether service of process upon government counsel outside the Western District of Pennsylvania is void, but deem it of paramount importance to determine the controversy upon its merits rather than upon questions of practice and procedure.

The real question before this court is whether the United States has the right under the facts of this case to proceed

in the District Court for the Southern District of New York by an original bill rather than by a supplemental bill in the 1912 suit in the District Court for the Western District of Pennsylvania. We emphasize the negative proposition that this Court is not called upon to rule whether a monopoly exists, whether there is a conspiracy in restraint of trade or whether the corporate structure of Aluminum Company of America should be revised.

It may be stated as a general proposition that if the subject matter is identical a Federal Court first acquiring jurisdiction over the subject matter may enjoin a second suit in another court in which it is sought to defeat the first court's jurisdiction. Steelman *v.* All Continent Corporation, 57 S. Ct. 705, opinion filed April 26, 1937.

Are the issues, the parties, the subject matter and the relief sought in the 1937 New York suit substantially identical with those of the 1912 Pennsylvania suit? We think not. The Pennsylvania suit was against one defendant, the Aluminum Company of America; the New York suit is against Aluminum Company of America and sixty-two additional defendants. Even if wholly owned subsidiaries, officers and directors of Aluminum Company of America are considered as being included in the Pennsylvania suit because of their relationship to the sole defendant in that case, the record discloses that twenty-three of the defendants in the New York suit were neither subsidiaries, officers nor directors of the Aluminum Company of America. In fact some of the corporate defendants in the New York suit were not in existence in 1912.

Turning from a comparison of parties defendant to that of issues, we find only such similarity as may exist between an infant and a full grown man. The acts complained of may be similar in character but are different in fact. In the Pennsylvania action the United States based its antitrust suit against the Aluminum Company of America upon alleged monopolistic and restrictive practices. The United States expressly conceded that the monopoly enjoyed by Aluminum Company at the time of suit was lawful because of its ownership of unexpired basic patents, but complained of the unlawful means employed to perpetuate the monopoly

as evidenced by contracts with the Swiss Aluminum Company, the General Chemical Company, the Norton Company, the Pennsylvania Salt Company and an agreement with Kruttschmidt Coleman. In the New York action the United States based its antitrust suit upon an alleged unlawful monopoly and set forth, in detail, devices used by the defendants designed to curtail imports of aluminum and related commodities by American firms, and exports to the United States by foreign producers. Twelve paragraphs of the New York petition are devoted to fact allegations meant to and tending to demonstrate that Aluminum Company of America has a ninety to one hundred percent monopoly of various aluminum and related commodities and thereby has the power to fix arbitrary and unreasonable prices. This is alleged to be in violation of the Sherman Antitrust Act regardless of the devices used to perpetuate the monopoly.

When we examine the respective petitions, it becomes obvious that whereas the United States, in the Pennsylvania suit, treated the existence of a monopoly as wholly lawful but complained of the devices used to maintain the monopoly after the expiration of patents owned by the defendant, by the time it brought the New York suit the issue had become not whether any specific device was lawful but whether the monopoly which existed in 1937 was lawful.

The most powerful argument to sustain the contention that the suits are not identical can be found in the nature of the relief sought. The New York petition prays that the Aluminum Company of America be dissolved; that its properties be rearranged under several separate and independent corporations; that receivers be appointed; and that the stockholders of Aluminum Company of America and of Aluminum Limited divest themselves of their stock in one or the other of these corporations. This is in strong contrast to the 1912 Pennsylvania petition in which the United States sought merely to eliminate certain practices of the Aluminum Company of America which the United States deemed objectionable under the Sherman Antitrust Act.

Our conclusion is that the two suits are not so similar as to parties defendants, subject matter, issues or relief sought as to entitle the defendants to injunctive relief.

We are not impressed with the argument that it would be inconvenient for Aluminum Company of America to defend the suit in New York. If the fact that it may be necessary for a defendant to retain counsel and prepare a defense amounts to irreparable harm, such as to justify relief by injunction, then an injunction would be available to any defendant in any suit. Moreover, no matter in what jurisdiction the suit is tried a certain burden of inconvenience will of necessity be borne by the parties litigant. We think this phase of the argument is mere makeweight.

In view of our decision on the merits of the controversy, we deem it unnecessary to determine whether the Western District of Pennsylvania or the Southern District of New York is the proper venue for all antitrust actions involving the Aluminum Company of America as one of the parties litigant.

The petition of Aluminum Company of America is dismissed, service of process upon government counsel is quashed, the ex parte order of April 29, 1937 and the preliminary injunction of May 14, 1937 are vacated and the injunctive relief prayed for is denied.

A true Copy. Teste:

____ ____,

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

EXHIBIT "B".

Opinion of District Court of the United States for the Western District of Pennsylvania of May 14, 1937, Granting Preliminary Injunction.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

NOVEMBER TERM, 1912.

In Equity.

No. 159.

UNITED STATES OF AMERICA

v.

ALUMINUM COMPANY OF AMERICA.

OPINION ON PRELIMINARY INJUNCTION.

Opinion. (Filed May 14, 1937.)

GIBSON, *District Judge:*

On April 23, 1937, the United States, represented as counsel in their official capacities by Homer S. Cummings, Attorney General, Robert H. Jackson, Assistant Attorney General, Wendell Berge, Walter L. Rice and John W. Aiken, Special Assistants to the Attorney General, Special Attorneys N. A. Townsend, Jr., and F. Gwyn Harper, Jr., and Lamar Hardy, United States Attorney for the Southern District of New York, filed a petition in equity in the Southern District of New York wherein the Aluminum Company of America, a number of its subsidiaries, and certain present or past officers of the Aluminum Company, or its subsidiaries, were charged with violations of the Sherman Anti-trust Act, and the court was prayed to grant injunctive relief and to order that the Aluminum Company be dissolved.

On April 29, 1937, the Aluminum Company of America filed its petition in this court at No. 159 November Term, 1912, wherein it set forth the existence of a proceeding in this court, at that number and term, which had been instituted by the then Attorney General and in which practically the same charge had been made as was put forth in the bill in the Southern District of New York. This proceeding had proceeded to the point of a consent decree, it was further recited, in which practically the same injunctive relief had been granted as was prayed in the New York petition, but in which was no decree ordering the dissolution of the Company. The Aluminum Company claimed, in view of the facts set forth, that jurisdiction over the subject matter of the New York action was in this court, not in the District Court for the Southern District of New York, and prayed injunctive relief against the Attorney General and his Assistants.

Pursuant to the petition of the Aluminum Company, upon proper showing, this court granted a temporary restraining order and fixed May 7, 1937 as the date for hearing thereon. In its petition the Aluminum Company sought to join the Attorney General and his Assistants, *supra*, as parties to the action in this District, and subpœnas upon them were issued. They were also served with notices of the restraining order.

Upon the return day of the temporary restraining order Robert H. Jackson, Assistant Attorney General, and Walter L. Rice, Special Assistant to the Attorney General, appeared specially and moved the court to quash the service of the subpœnas, set aside the return thereon, dismiss the defendant's petition and vacate the restraining order. After argument this motion was taken under advisement, and testimony was heard on the part of the Aluminum Company in support of its petition for a preliminary injunction. The representatives of the Attorney General were allowed to participate in this hearing without prejudice to their rights under the motion.

The service of notices of the restraining order and of the subpœnas was made, not in this District, but in Washington, D. C., and in New York. While this is given as the basis of the motion, it in turn is founded upon the verbal conten-

tion that the original proceeding in this District is dead, by reason of the length of time between the present and the date of the consent decree, June 7, 1912.

If it were to be admitted that this contention is sound, then no question can exist as to the power of the Attorney General to institute the action in the Southern District of New York. The Congress has given him the power, deprecated though its exercise may be at times, to bring such a suit in any District in which the defendant transacts business. But we have been unable to find any statute or other authority which places any limit upon the life of a perpetual injunction or upon the time during which the jurisdiction of the court issuing it shall endure. On the contrary, a number of cases may be cited in which parties have, by supplemental bill or petition, applied to the court of original jurisdiction for more drastic enforcement, or modification, of the decree long after its issuance. An example is *United States* v. *Standard Oil Company of New Jersey*, 47 F. (2d) 288. By the original decree, in 1911, the Standard Oil Company of New York and the Vacuum Oil Company were two of the companies separated. About twenty years later the two companies sought to merge. The Attorney General filed a supplemental petition in the court of original jurisdiction to enjoin the merger. This petition was denied, but without any question by the court as to the propriety of the procedure. Again, the United States, some years after the injunctive decree had been granted in *United States* v. *International Harvester Co.*, 274 U. S., 693, proceeded by supplemental petition in an attempt to amend the original decree and secure the dissolution of the Harvester Company. And again no question was raised as to the propriety of the procedure. The anti-trust decree against the large meat packers was entered in 1920. Ten years later Swift & Co., an original defendant, filed a petition for a modification of the original decree. The court held, opinion by Mr. Justice Cardozo, that the existing decree could be altered only upon a showing of changed conditions. It is patent that no court other than the court of original jurisdiction could determine whether conditions had changed.

In *United States* v. *Swift & Co., supra,* Mr. Justice Cardozo mentioned the fact that power to modify the decree

had been reserved, but stated: "If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of chancery."

Having reached the conclusion that mere passage of time is not sufficient to deprive a court of jurisdiction over the subject matter of its original decree, as we have, the next matter for consideration is whether or not any close relation exists between the subject matter of the New York petition and that of the bill in this District. An examination of the two pleadings will disclose their substantial identity in many respects. The New York petition, it is true, is filed against a number of subsidiaries of the Aluminum Company of America and a number of individual officers. But no question exists as to what is the parent body, and all defendants could be brought in to the original suit by supplemental bill under the provisions of Section 15 of the Clayton Act (15 U. S. C. A., Sec. 25). The New York petition recites, among the specific acts of the defendant in alleged violation of the Sherman Anti-Trust Act, many of the same specific acts charged in the original petition. The injunctive relief granted in the decree in this District might well answer all the prayers of the New York petition except that for the dissolution of the Company. Dissolution of the defendant, it will be remembered, was made the subject matter of a supplemental bill in *United States* v. *International Harvester Co., supra.*

A conclusion that the original proceeding still has force and effect, and that the New York petition presents nothing other than additional outgrowth of the original matter in the petition in this District, seems to force this court to deny the motion of the representatives of the Attorney General and to grant the preliminary injunction prayed. See *Looney* v. *Eastern Texas R. R. Co.*, 247 U. S. 214.

The present petition of the Aluminum Company is not an independent action against the United States or its legal representatives, but is merely ancillary to the original action in which the United States has submitted itself to the court by the institution of its suit therein. The Government and its counsel are already in court, in theory, and this being so, all that is necessary is that its legal representatives receive

due notice of the supplementary proceeding instituted; and such notice may be given without reference to their citizenship or residence. That the original counsel have been succeeded by others does not change the situation. The successors are in privity with their predecessors. *New Orleans* v. *Citizens Bank,* 167 U. S. 371.

As illustrative of principles involved in the instant question is the case of *Georgia Power Co.* v. *Tennessee Valley Authority,* 17 Fed. Supp. 769. The plaintiff had filed a bill in the Northern Georgia District wherein it prayed, *inter alia,* a preliminary injunction against the defendant. Upon hearing this prayer was denied. Thereupon plaintiff filed a like bill in the Middle District of Tennessee. The District Court for the Northern District of Georgia then enjoined the plaintiff from proceeding with the latter action. The court, Underwood, D. J., felt, as we feel in the instant case, that it is the duty of the court of original jurisdiction to preserve that jurisdiction in the interest of orderly procedure. This ruling of the Georgia Court has been sustained upon appeal by the Circuit Court of Appeals for the Fifth Circuit.

A preliminary injunction will issue, as prayed in the defendant's petition, and the motion of the Assistant Attorney General and the Special Assistant to the Attorney General will be denied.

MOTION TO ADVANCE ARGUMENT

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IN THE

Supreme Court of the United States

NO. 281 OCTOBER TERM, 1937.

ALUMINUM COMPANY OF AMERICA,
Appellant,

v.

THE UNITED STATES OF AMERICA.

MOTION TO ADVANCE ARGUMENT.

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To the Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The undersigned, on behalf of the above named appellant, pray that argument in this case may be advanced to a day certain satisfactory to this Honorable Court but preferably not earlier than one month from the date of disposition of this motion, such time being necessary for the preparation of briefs.

The matter involved is the right of the United States to maintain an action in equity under the anti-trust laws against the Aluminum Company of America in the United States District Court for the Southern District of New York under the following circumstances: The United States by petition in equity had secured a decree of the District Court of the United States for the Western District of Pennsylvania in the above captioned case under date of June 7, 1912, enjoining enumerated existing and prospective violations of the anti-trust laws. That decree, as modified on October 25,

1922, pursuant to a supplemental proceeding brought by the Aluminum Company of America, remains in full force and effect. On April 23, 1937, the United States filed another petition in equity in the District Court of the United States for the Southern District of New York, seeking equitable relief against various parties defendant, including the Aluminum Company of America and its officers, directors and most of its 100% subsidiary corporations, because of alleged violations of the anti-trust laws. The Aluminum Company of America thereupon filed a petition, in the earlier equity action in the Pennsylvania court, praying for an injunction to restrain enumerated law officers of the United States from prosecuting in the New York court the second action against the Aluminum Company of America, its 100% subsidiaries, or its officers or directors in their official capacities, such petition for injunctive relief being predicated upon the contention that the second action in equity by the United States embraced subject matter and issues substantially identical with those presented in the first suit. Pursuant to the prayer of the petition and after a preliminary hearing and argument by counsel for both sides a preliminary injunction was granted. Before a final hearing was held, the Attorney General of the United States filed an expediting certificate under the so-called Expediting Act of February 11, 1903, c. 544, § 1, 32 Stat. 823, as amended (15 U. S. C. A. § 28), certifying that in his opinion "this cause recently has become a case of general public importance requiring the prompt consideration of at least three judges comprising an Expedition Court." The available judges of the United States Circuit Court of Appeals of the Third Circuit thereupon impaneled Circuit Judges Davis, Thompson and Biggs as a statutory Expediting District Court of the United States for the Western District of Pennsylvania. The said judges thereupon held a final

injunction hearing and seasonably thereafter vacated the preliminary injunction and refused a permanent injunction, pursuant to the terms of a final decree entered July 27, 1937. The appellant is appealing from that decree.

In support of the motion to advance the argument of this case the following reasons are submitted.

1. The case is one of general public interest, as evidenced by the aforementioned expediting certificate of the Attorney General, and is of a nature entitled to precedence in several respects (although not in the matter of argument before this Court) by the so-called Expediting Act of February 11, 1903, c. 544, 32 Stat. 823, as amended (15 U. S. C. A. §§ 28-29).

2. An early determination of the issue involved is of importance to the appellant in view of the action pending against it in the District Court of the United States for the Southern District of New York.

Respectfully submitted,

WILLIAM WATSON SMITH,
FRANK B. INGERSOLL,
LEON E. HICKMAN,
Counsel for Aluminum Company of America.

Dated September 27, 1937.

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IN THE

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ALUMINUM COMPANY OF AMERICA, Appellant,

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THE UNITED STATES OF AMERICA.

APPELLANT'S BRIEF.

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APPELLANT'S BRIEF.

OPINIONS OF THE COURT BELOW.

The opinion (R. 142) of the District Court of the United States for the Western District of Pennsylvania on the issuance of a preliminary injunction is reported in 19 F. Supp. 374. The opinion (R. 174) of the statutory Expediting District Court of the same district on the final injunction hearing is unreported.

JURISPICTION.

The jurisdictional statement required by paragraph 1 of Rule 12 of this Court has been previously filed, separately printed, and probable jurisdiction noted.

STATEMENT OF THE CASE

The 1937 Injunction.

The Aluminum Company of America has been, in turn, defendant, petitioner, and appellant, and in order to avoid confusion will hereinafter be referred to as Aluminum Company.

This appeal is from a final decree vacating a preliminary injunction and refusing a final injunction to restrain certain law officers of the United States from proceeding, on its behalf, with a suit in equity under the anti-trust laws against the Aluminum Company in the District Court of the United States for the Southern District of New York under the following circumstances:

The United States, by petition in equity (R. 8) filed by Attorney General George W. Wickersham, has secured a consent decree (R. 64) of the District Court of the United States for the Western District of Pennsylvania in this case under date of June 7, 1912, enjoining enumerated existing and prospective violations of the anti-trust laws by the Aluminum Company and its officers, agents and representatives.* That decree, as modified on October 25, 1922 (R. 77), pursuant to a supplemental proceeding brought by the Aluminum Company (R. 73), remains in full force and effect.

On April 23, 1937, the United States filed a second petition in equity (R. 92) in the District Court of the United States for the Southern District of New York, seeking equitable relief from various parties defendant, including the Aluminum Company, its officers, directors,

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* The Pennsylvania Court, litigation, pleading, and decree will hereinafter be referred to as the "Pennsylvania Court", the "Pennsylvania suit", the "Pennsylvania petition", or the "Pennsylvania decree", as the case may be.

and most of its 100% subsidiary corporations, because of alleged violations of the anti-trust laws.*

The law officers of the United States who signed the New York petition (R. 135) and are prosecuting the suit are Homer S. Cummings, as Attorney General of the United States, Robert H. Jackson, as Assistant Attorney General, Wendell Berge, as Special Assistant to the Attorney General, Walter L. Rice, as Special Assistant to the Attorney General, John W. Aiken, as Special Assistant to the Attorney General, F. Gwyn Harper, Jr., as Special Attorney for the United States, N. A. Townsend, Jr., as Special Attorney for the United States, and Lamar Hardy, as United States Attorney in the Southern District of New York.

On April 29, 1937, the Aluminum Company filed a petition (R. 78, 80, 91) in the Pennsylvania suit, praying for an injunction to restrain the law officers of the United States who were prosecuting the New York suit from proceeding with this second action against the Aluminum Company, its 100% subsidiaries, or its officers or directors in their official capacities. The Aluminum Company's petition for injunctive relief was predicated upon the contention that the New York suit embraced subject matter and issues substantially identical with those previously presented and adjudicated in the Pennsylvania suit and over which jurisdiction still remains in the Pennsylvania Court, thereby subjecting the Aluminum Company to the peril of two concurrent decrees on the same subject matter by two courts; and that these two courts, in turn, face the possibility of conflicting decrees and an unseemly conflict. Pursuant to the prayer of the petition and after a

* The New York Court, litigation and petition will hereinafter be referred to as the "New York Court", the "New York suit" or the "New York petition", as the case may be.

preliminary hearing and argument by counsel for both sides, a preliminary injunction (R. 141) was granted, supported by an able opinion (R. 142) by His Honor Judge Gibson, restraining the law officers of the United States who were prosecuting the New York suit from proceeding in that action against the Aluminum Company, its 100% subsidiaries, and its officers and directors in their capacities as such. No injunction was sought or granted to restrain further proceedings against the other defendants, including the stockholders of the Aluminum Company. The law officers of the United States so restrained had been named as parties defendant in the Pennsylvania suit by an *ex parte* order entered April 29, 1937 (R. 135), pursuant to authority vested in the District Court by Section 5 of the Sherman Anti-Trust Act, hereinafter quoted in Appendix A, at page 62.

Answer to the Aluminum Company's petition was filed (R. 153) on June 3, 1937, but before a final hearing could be held, the Attorney General of the United States, on June 8, 1937, filed an expediting certificate (R. 157) under the so-called Expediting Act, hereinafter quoted in Appendix C, at page 63. The available judges of the United States Circuit Court of Appeals for the Third Circuit thereupon impaneled Circuit Judges Davis, Thompson, and Biggs as a statutory Expediting District Court for the Western District of Pennsylvania (R. 160). The said judges held a hearing on the petition for final injunction and seasonably thereafter vacated the preliminary injunction and refused a permanent injunction, pursuant to the terms of a final decree (R. 186) dated July 27, 1937. From that decree the appellant is prosecuting this appeal.

It is necessary to an understanding of the 1937 injunction issue to state the nature of the Government's charges in the Pennsylvania and New York suits.

The Pennsylvania Suit.

The Pennsylvania petition (R. 8) charged in general terms that the Aluminum Company was guilty of restraint of trade and monopolization in violation of Sections 1 and 2 of the Sherman Act. The petition specifically charged the Aluminum Company with entering into contracts with the so-called Neuhausen Company of Switzerland (R. 17), the General Chemical Company (R. 19), the Norton Company (R. 20), the Pennsylvania Salt Manufacturing Company (R. 21), and Messrs. Gustave A. Kruttschnitt and James C. Coleman (R. 22), wherein competition in the aluminum industry was restrained or monopoly promoted by certain portions of each contract. The petition conceded (R. 28) that *until 1909* the Aluminum Company had been a lawful monopoly by virtue of the patent laws but charged (R. 28-30) that both before and after that date the company had monopolized the aluminum industry and restrained competition therein in a manner contrary to law, among other ways by the five contracts above mentioned.

The Pennsylvania decree, in addition to cancelling the restrictive provisions of the five contracts aforementioned and enjoining the making of similar contracts, contained three injunctive provisions of a comprehensive nature which were quite independent of the interdicted contracts.

(1) Paragraph 1 of the decree (R. 64), after perpetually and prospectively enjoining Aluminum Company, its agents and representatives, from carrying out its agreement with Societe Anonyme pour l'Industrie

de l'Aluminum, (the so-called Neuhausen or Swiss Company), and after perpetually and prospectively enjoining the Aluminum Company, acting by itself or through any other person or corporation, from entering into any other agreement of a comparable nature, contained a sweeping injunction against any contract or agreement of the Aluminum Company, acting by itself or through any other person or corporation, adversely affecting the importation of aluminum or alumina or bauxite or any other material from which aluminum can be manufactured or fixing or illegally affecting the prices of any of the same.

(2) The latter portion of paragraph 6 of the decree (R. 69) comprehensively enjoined any contract or agreement by the Aluminum Company, its officers, agents or representatives restricting or controlling output or prices or commerce in aluminum or in any material from which aluminum is manufactured.

(3) Paragraph 7 of the Pennsylvania decree (R. 69-72), among other things, enjoined the Aluminum Company, its officers and agents, from making a combination in any form to control the output or price of any article manufactured from aluminum or from charging any price for crude or semi-finished aluminum that will have the effect of discriminating against a competitor of the Aluminum Company in bidding on contracts for aluminum products.

The pertinent portions of paragraphs 1, 6 and 7 of the Pennsylvania decree are hereinafter quoted in Appendix D at pages 65-69.

It was the intention of the Pennsylvania Court and the Government to regulate the Aluminum Company comprehensively. The Government might have obtained a decree cancelling the restrictive provisions in the

agreements therein mentioned and restraining specific acts therein set forth, without going further, but it did not do so, as we have set forth above. Furthermore, the decree is drawn in terms which apply not only to aluminum, alumina or bauxite but (in paragraph 1) to "any other material from which aluminum can be manufactured" (R. 65). Paragraph 6 (R. 69) not only relates to "commerce in bauxite, alumina, or aluminum" but also to . . . "any branch of the business of manufacturing aluminum goods". Paragraph 7 (R. 69-70) applies to "any branch of manufacturing from crude or semifinished aluminum" and, in sub-paragraph (a), "any product manufactured from aluminum". No new uses of aluminum, no new aluminum alloys, no new subsidiaries, no new plants escape the bans of the Pennsylvania decree because of their newness.

It was the intention of the Pennsylvania Court and the Government to regulate the Aluminum Company perpetually. The fact that its decree (R. 64) avers that it was "entered upon the assumption that the defendant, Aluminum Company of America, has a substantial monopoly of the production and sale of aluminum in the United States" (R. 72) and provides that (R. 72) Aluminum Company may apply for modification only if it should appear to the court that "substantial competition has arisen" and not "oftener than once every three years" demonstrates, independently of everything else, that the decree was intended to operate as a permanent regulation and control, extending for all future time.

Had the Government seen fit to confine the 1912 consent decree to the five contracts above mentioned and other specific acts, it might have done so and thereby left other violations of law for future litigation, when and if such violations of law took place. Instead of that,

the Government sought and obtained a decree not only adjudicating the past but regulating the future in language entirely comprehensive of the aluminum industry regardless of time or size.

The New York Suit.

The New York suit is also a proceeding in equity, filed by the United States on April 23, 1937. The Aluminum Company, with others, is again charged with violating Sections 1 and 2 of the Sherman Anti-Trust Act (R. 105), the details of which violations are averred under three headings. The first (R. 105-108) describes the alleged extent of the monopoly of the Aluminum Company and its subsidiaries thus obtained. The second (R. 108-120) describes the preservation of that monopoly by alleged restraints upon foreign competition. The third (R. 121-133) describes how that monopoly has allegedly been acquired and maintained by unfair and oppressive tactics. The five contracts of which, among other things, complaint was made in the Pennsylvania petition (R. 17-22), are again complained of in the New York petition (R. 110, 122-124).

Each charging paragraph of the New York petition charges the Aluminum Company with violations of the anti-trust laws which, if true, are inhibited by the existing Pennsylvania decree. This fact is the fundamental basis for the contention of the Aluminum Company that the Government is not entitled to maintain the New York action against it.

The New York suit is claimed by the Government to be dissimilar to the Pennsylvania suit in three respects, which we consider immaterial: (1) 62 additional parties defendant have been named; (2) additional relief to that

which has heretofore been sought in the Pennsylvania suit is sought against the Aluminum Company; and (3) facts occurring subsequent to 1912 are averred (all of which, if true, violate the decree in the Pennsylvania suit).

SPECIFICATION OF ERRORS.

The Aluminum Company will urge all of the assigned errors (R. 188-206). Error is averred as follows:

1. The statutory Expediting District Court erred in its findings of fact and conclusions of law that the subject matter and issues involved in the New York suit differ substantially from those in the Pennsylvania suit, that the New York suit does not subject the Aluminum Company to the peril of two conflicting decrees, and that the Aluminum Company will not suffer irreparable injury by being compelled to defend the New York suit. This issue is raised by assignments 6, 7, 8, 12, 13, 14, and 19, (R. 191-192, 194-195, 199), and is discussed at pages 12-34, *infra*.

2. The statutory Expediting District Court erred in concluding that there was no occasion for it to issue an injunction to protect the jurisdiction acquired by the Pennsylvania Court over the subject matter of the Pennsylvania suit or to protect the Aluminum Company from the peril of two decrees existing at the same time in two separate and independent courts of the United States affecting the same subject matter and issues. This issue is raised by assignments 15, 16, 20, 21 and 24 (R. 195-196, 199-200, 202) and is discussed at pages 12-45, *infra*.

3. The statutory Expediting District Court erred in failing to find that the officers, agents and 100% subsidiaries of the Aluminum Company who are named as

parties defendant in the New York suit are the agents and representatives of the Aluminum Company and thereby subject to the Pennsylvania decree. This issue is raised by assignments 18 and 22 (R. 197-198, 201) and is discussed at pages 14-15, *infra.*

4. The statutory Expediting District Court erred in failing to conclude that, if the United States is entitled to the relief prayed for in the New York suit, it can obtain that relief upon proper application to the Pennsylvania Court. This issue is raised by assignment 23 (R. 201) and is discussed at pages 31-33, *infra.*

5. The statutory Expediting District Court erred in concluding that Government counsel had the right to bring about the creation of the Expediting Court and participate in its deliberations and at the same time stand on a special appearance. This issue is raised by assignments 10, 11, 25, 26, 27 (R. 193-194, 203-206) and is discussed at page 51, *infra.*

6. The statutory Expediting District Court erred in entering its final decree of July 27, 1937, wherein it was

> "Ordered, Adjudged and Decreed that the petition filed by Aluminum Company of America on April 29, 1937 is dismissed; that the ex parte order of April 29, 1937 making eight members of the Department of Justice 'parties defendant' is vacated; that the preliminary injunction of May 14, 1937, is vacated; and that the injunctive relief prayed for by Aluminum Company of America is denied."

This issue is raised by assignments 1, 2, 3, 4, 5 and 17 (R. 189-191, 196-197) and is discussed throughout the remainder of the brief.

ARGUMENT.

Summary.

It is the position of the Aluminum Company: (1) that the Government's New York petition embraces subject matter and issues substantially identical with those raised by the Government in the Pennsylvania petition; (2) that the Government cannot lawfully subject the Aluminum Company to the peril of two decrees on substantially identical issues and subject matter, and both it and the courts to the ensuing peril of conflicting regulation by two district courts of coordinate jurisdiction; and (3) that the proper remedy is an injunction issued by the first court, *not* against the second court but against parties attempting to proceed in the second court.

The Aluminum Company does *not* challenge the right of the Government to bring and maintain a suit against any of the *other* defendants in New York or elsewhere, except as such other defendants may be sued in their capacities as the Company's officers, directors, or subsidiaries, all such agents or representatives being bound by the express terms of the Pennsylvania decree. The Aluminum Company does *not* contend that the Government can only proceed against it by a contempt proceeding in the Pennsylvania suit, for it recognizes and admits that the Government may proceed against it by supplemental petition in the Pennsylvania suit and secure any additional relief, including dissolution, to which the Government may prove itself entitled. Such a supplemental proceeding is the orthodox method of supplementing litigation against one already regulated by an anti-trust decree.

It is the position of the Aluminum Company that the validity of the service of process upon the law officers of the United States whom the Aluminum Company has sought to enjoin from proceeding with the New York suit is established on three grounds, each believed to be conclusive: (1) The United States and the predecessors in office of its law officers here involved voluntarily submitted to the jurisdiction of the Pennsylvania Court by bringing the Pennsylvania suit. The present law officers, being successors in office and therefore in privity with their predecessors, are subject to any proper orders or decrees of the Pennsylvania Court upon being given due notice of what is contemplated: Such notice was given. (2) Additionally, these law officers were joined as parties defendant and served with process in the Pennsylvania suit by *ex parte* order entered April 29, 1937 (R. 135), upon authority vested in the court by Section 5 of the Sherman Act. (3) These law officers have voluntarily submitted to the jurisdiction of the Pennsylvania Court by invoking the so-called Expediting Act of 1903 and bringing about the creation of a statutory Expediting District Court composed of three circuit judges.

I.

The Pennsylvania and New York Suits Are Substantially Identical in Subject Matter and Issues.

This identity is established in two ways. (1) It is revealed by a comparison of the Pennsylvania and New York petitions. (2) It is established by a comparison of the charges in the New York petition with the prohibitions of the Pennsylvania decree.

1. THERE IS A STRIKING SIMILARITY BETWEEN THE NEW YORK AND PENNSYLVANIA PETITIONS. The first 39 paragraphs (R. 95-105) of the New York petition state

averments necessary to jurisdiction and venue and describe the defendants and the aluminum industry, but in themselves contain no averments of wrongdoing. Exactly the same ground is covered in the Pennsylvania petition in paragraphs I, III, and XV (R. 9, 12, 30).

Paragraph 40 (R. 105) of the New York petition states in comprehensive terms, to be detailed in succeeding paragraphs, that the Aluminum Company has been guilty of restraints of trade and monopolization in violation of Sections 1 and 2 of the Sherman Act. The same charge is made in paragraph II (R. 9) of the Pennsylvania petition, likewise to be detailed in succeeding paragraphs.

Paragraph 41 (R. 105) of the New York petition charges that excessive profits have been made, repeating a similar charge in paragraph XIII (R. 27) of the Pennsylvania petition.

Paragraphs 42 to 53 (R. 106-108) of the New York petition state the large proportion of various lines of business allegedly held by the Aluminum Company and the claimed monopolization thereby created. The same charge is found in paragraph IV (R. 12-17) of the Pennsylvania petition.

Paragraphs 54 to 82 (R. 108-120) of the New York petition aver the maintenance of the alleged monopoly by agreements and conspiracies designed to prevent the importation of aluminum and aluminum products, a charge likewise contained in paragraph V (R. 17-19) of the Pennsylvania petition.

Paragraphs 83 to 100 (R. 121-131) of the New York petition aver the maintenance of the alleged monopoly by acts and agreements in restraint of trade and oppressions. The same charge was made in paragraphs VI to XII (R. 19-26) of the Pennsylvania petition.

Paragraph 100 (R. 131) of the New York petition paraphrases in concise form paragraph X (R. 23) of the Pennsylvania petition.

Paragraph 101 (R. 132) of the New York petition charges excessive prices, an averment which is also made in paragraph XIII (R. 27-28) of the Pennsylvania petition.

Paragraphs 102 and 103 (R. 132) of the New York petition simply summarize the effect of the previously alleged wrongful acts and the desirability of free competition much as a similar summary is made in paragraph XIV (R. 28-30) of the Pennsylvania petition.

One might suppose, and perhaps quite accurately, that the draftsman of the New York petition had the Pennsylvania petition opened before him as he drafted the second petition.

2. NOT ONLY ARE THE NEW YORK AND PENNSYLVANIA PETITIONS SUBSTANTIALLY IDENTICAL IN THE NATURE OF THEIR CHARGES BUT THE PENNSYLVANIA DECREE WAS SO DRAWN THAT IT ENJOINED NOT ONLY THE PRACTICES CHALLENGED IN THE PENNSYLVANIA PETITION BUT LIKEWISE THE SIMILAR ONES AVERRED IN THE NEW YORK PETITION. The Government does not deny that the Pennsylvania decree is in full force and effect, or that it was intended to operate prospectively and to interdict contracts, combinations, or agreements entered into subsequent to 1912 quite as definitely as those made prior to that date. An analysis of the New York petition (R. 92) will demonstrate that it makes no charges that are not enjoined by the Pennsylvania decree (R. 64).

The Pennsylvania decree (R. 64) is binding upon not only the Aluminum Company but its officers, agents and representatives. The testimony is undisputed (R. 213-214, 225-226, 230-241), that some twenty of the cor-

porate defendants in the New York suit are 100% subsidiaries of the Aluminum Company, operated as departments of its business and that an additional nineteen defendants are present or former officers or directors of the Aluminum Company. Judge Gibson made appropriate findings to this effect (R. 144-145) but the Expediting Court failed to do so, presumably because such a finding of fact was immaterial to its view of the case. Certainly it requires no demonstration that the 100% subsidiaries of the Aluminum Company are its agents and representatives.

The New York petition contains 103 numbered paragraphs. The first two paragraphs (R. 95-96) set forth the jurisdiction and venue. Paragraphs 3 to 35, inclusive (R. 96-104), describe the various defendants. Paragraphs 36 to 39, both inclusive (R. 104-105) are descriptive of the aluminum industry.

Paragraph 40 (R. 105) is the first charging paragraph. It charges in general terms that the Aluminum Company has monopolized and restrained and attempted to monopolize and restrain interstate and foreign commerce in bauxite, alumina, aluminum, and products manufactured therefrom, in the various ways detailed in the succeeding paragraphs of the petition, paragraph 40 concluding with the statement that the general charges of monopolization and restraint "will now be described in further detail, that is to say".

Paragraphs 41 to 53 (R. 105-108) set forth the extent to which it is alleged that the Aluminum Company has obtained a monopoly by the contracts, combinations, and agreements characterized in general terms in paragraph 40 of the petition, and detailed in paragraphs 54 and following, and state the alleged effect of such monopoly. Paragraph 41 charges that the effect of such monopoly has been to make possible excessive profits.

Paragraph 53 states that the effect of this alleged monopoly, claimed to have been brought about by contracts, combinations and agreements in restraint of trade, results in the power to control production and prices.

The New York petition next charges that the monopoly complained of in paragraphs 41 to 53 has been brought about and preserved (1) by restraints upon foreign competition, as detailed in paragraphs 54 to 82, both inclusive (R. 108-120), and (2) by unfair and oppressive tactics, detailed in paragraphs 83 to 100, both inclusive (R. 121-131). Each and every such practice and any resulting monopolization or restraint are enjoined by paragraphs 1, 6 or 7 of the Pennsylvania decree, hereinafter quoted at pages 65-69.

It was argued by the Government in the Court below that paragraph 53 (R. 108) of the New York petition alleges that the Aluminum Company is a monopoly irrespective of the devices employed to preserve and extend that monopoly and that this is a charge not made in the Pennsylvania petition. It is submitted that the Government is mistaken in both contentions. There is no more of an independent charge of monopolistic power *per se* in paragraph 53 of the New York petition than is found in paragraph XI (R. 25-26) of the Pennsylvania petition. The possibility of abuses of such power is completely covered by paragraphs 1, 6 and 7 of the Pennsylvania decree. Paragraph 53 of the New York petition avers power in the Aluminum Company to fix prices and suppress competition by virtue of an alleged 100% monopoly of the production and sale of alumina and virgin aluminum in the United States. This paragraph is one of a number in the subdivision of the petition captioned "Monopoly of Aluminum Company and Subsidiaries" (R. 105), the details as to the alleged monop-

oly in alumina and aluminum appearing in paragraphs 44 and 45 (R. 106). This entire subdivision of the petition is in explanation of paragraph 40 (R. 105), which charges that the Aluminum Company has monopolized and restrained commerce by contracts, combinations and conspiracies which, the paragraph concludes, "will now be described in further detail, that is to say". Paragraph 53 is plainly no more than a specification of paragraph 40. The general charge of monopolization and restraints by means of contracts, combinations and conspiracies contained in paragraph 40 is to be read in connection with the entire balance of the New York petition for the reason well set forth by this Court in *Swift & Co. v. United States,* 196 U. S. 375 (1905, opinion by Mr. Justice Holmes) where it was said, in determining the relation between general and specific charges in that petition (p. 395):

> "But after all the specific charges there is a general allegation that the defendants are conspiring with one another, the railroads and others, to monopolize the supply and distribution of fresh meats throughout the United States, etc., as has been stated above, and it seems to us that this general allegation of intent colors and applies to all the specific charges of the bill. Whatever may be thought concerning the proper construction of the statute, a bill in equity is not to be read and construed as an indictment would have been read and construed a hundred years ago, but it is to be taken to mean what it fairly conveys to a dispassionate reader by a fairly exact use of English speech. Thus read this bill seems to us intended to allege successive elements of a single connected scheme."

The detailed charges in paragraphs 54 to 82 of the New York petition are fairly summarized in the petition

heading (R. 108): **"Preservation of Monopoly by Restraints upon Foreign Competition."** Paragraph 54 (R. 108) comprehensively charges such restraints in general terms, which, it concludes, "will now be described in greater detail, that is to say" (R. 109). Paragraphs 55 to 82, both inclusive (R. 109-120), set forth in detail the various alleged combinations, contracts, and agreements with foreign producers which are included in the general language of paragraph 54. Some are alleged to have been brought about by intimidation. Agreements with foreign competitors, so induced, to refrain from shipping goods into the United States are quite as much contracts, combinations or conspiracies, as the case may be, as if such foreign competitors were paid by the Aluminum Company for such failure to compete. Combination and conspiracy are all-inclusive terms (footnote, *infra*, p. 66). The same thing is true if interlocking interests were obtained with the foreigners for that purpose.

The averments that Aluminum Company formed Aluminium Limited (paragraph 72—R. 116), that these two companies do not compete in each other's market because of an agreement or understanding, whether brought about by reason of common control or otherwise (paragraph 74—R. 117), that Aluminium Limited was formed with the intent and purpose of transferring to it the contractual obligations which Aluminum Company had entered into with foreign producers and to enable Aluminium Limited to enter into further contractual obligations with the foreign producers, restricting competition in world markets and curtailing the importation of aluminum into the United States (paragraph 75—R. 117), that the policies of Aluminium Limited are being directed through the common control of it and Aluminum Company, resulting in contractual arrangements and understandings pursuant

to which importations of aluminum into the United States have been restrained (paragraph 76—R. 117), that pursuant to this policy and for these purposes Aluminium Limited has made various contracts with foreign producers (paragraphs 77 to 80*, both inclusive, and 82 —R. 118-120), charge nothing more than a combination or agreement between Aluminum Company and Aluminium Limited, a potential importer of foreign aluminum, to restrain importations of its aluminum and perhaps the product of other potential foreign importers.**

Such restraining agreements, combinations or understandings to restrain the importation of aluminum, alleged in both suits to be for the purpose of monopolization, were comprehensively enjoined by paragraph 1 (R. 64-65, quoted *infra,* pp. 65-66) of the Pennsylvania decree. Such restraints on importation are likewise enjoined by paragraph 6 (R. 69, quoted *infra,* pp. 66-67) of the Pennsylvania decree, inasmuch as they are necessarily combinations or agreements for the purpose, or having the effect, of controlling domestic output or prices or the obtaining of a supply of bauxite, alumina,

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* Paragraph 81 (R. 120) is not a charging paragraph, but purports to state what acquisitions by the Aluminum Company were contemporaneously submitted to the Department of Justice.

** If the Aluminum Company is charged in the New York petition to have conspired with its stockholders or with Aluminium Limited stockholders to control Aluminium Limited, that is a plain combination or conspiracy and is of course forbidden by paragraph 1 of the Pennsylvania decree (*infra,* pp. 65-66). On the other hand, if the New York petition does not charge that the Aluminum Company has so combined with its stockholders or with the stockholders of Aluminium Limited, then no offense is charged against Aluminum Company and the suit of the United States as to these matters is against the stockholders individually. The Aluminum Company does not claim that the United States should be enjoined, nor was it ever so enjoined from proceeding against the individual stockholders in the New York suit or against anybody except the Aluminum Company, its officers and directors in their capacities as such, and its 100% subsidiaries.

or aluminum, any and all of which contracts, combinations or agreements are prohibited by this paragraph of the decree.

Paragraphs 83 to 103, both inclusive (R. 121-133), of the New York petition are accurately characterized in the petition by the heading **"Acquisition and Maintenance of Monopoly by Unfafr and Oppressive Tactics"** (R. 121).

Paragraph 83 (R. 121) avers generally that the monopolistic control of the aluminum industry in the United States by the Aluminum Company has been brought about and maintained by various allegedly oppressive agreements and understandings and by contracts and combinations and conspiracies in restraint of trade "which will now be described in greater detail, that is to say", the details following in paragraphs 84 to 100, both inclusive (R. 121-131). The alleged contracts, combinations, and conspiracies in restraint of trade are set forth in paragraphs 84 to 97, both inclusive (R. 121-128), and the alleged oppressive tactics are averred in paragraphs 98 to 100, both inclusive (R. 129-131).

Paragraph 98 (R. 129) charges that competitors of the Aluminum Company, to-wit, Sheet Aluminum Corporation and Fairmont Aluminum Company, have been interfered with because Aluminum Company has had control of the prices of virgin aluminum, as well as aluminum sheet, and has so reduced the spread of the prices between these two products that these two competitors could not buy virgin aluminum, fabricate it and sell it as sheet except at a loss. The charge is that the price of virgin aluminum is kept too high as compared with the price of sheet.

Paragraph 99 (R. 130) charges that the Baush Machine Tool Company has been similarly oppressed be-

cause of the spread between the prices of virgin aluminum and of aluminum alloy sheet.

Paragraph 100 (R. 131) charges discriminations in favor of subsidiaries of the Aluminum Company as against competitors of that company and the harassment of said competitors. It is a remarkably close paraphrase of paragraph 7 of the Pennsylvania decree.

The restraints and oppressions charged in paragraphs 83 to 100, both inclusive, of the New York petition are comprehensively and prospectively enjoined by paragraphs 6 and 7 (R. 69-71, quoted *infra,* pp. 66-69) of the Pennsylvania decree. Paragraph 6 deals with restraints which affect output, prices, or sources of aluminum or of raw materials, and paragraph 7 forbids discriminatory and oppressive practices of exactly the character complained of in both the Pennsylvania and New York suits.

A number of the abuses referred to in the New York petition (paragraphs 56, 86, 87, 88 and 90) are expressly forbidden by the Pennsylvania decree.*

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* Paragraph 56 (R. 110) of the New York petition complains of a contract between Northern Aluminum Company, Ltd., a subsidiary of Aluminum Company, and Societe Anonyme pour l'Industrie de l'Aluminum, the performance of the illegal portions of which was specifically enjoined by paragraph 1 (R. 64) of the Pennsylvania decree.

Paragraph 86 (R. 122) of the New York petition, complains of a contract between Aluminum Company and General Chemical Company, the performance of the illegal portions of which was specifically enjoined by paragraph 2 (R. 65) of the Pennsylvania decree.

Paragraph 87 (R. 122) of the New York petition complains of a contract between Aluminum Company and Pennsylvania Salt Manufacturing Company, the performance of the illegal portions of which was specifically enjoined by paragraph 4 (R. 68) of the Pennsylvania decree.

Paragraph 88 (R. 123) of the New York petition complains of a contract between Aluminum Company and Norton Company, the per-

Paragraph 101 (R. 132) of the New York petition charges a 1¢ per pound price advance which is said to be an exercise of the Aluminum Company's power to fix oppressive and unreasonable prices. Control of prices by combination, contract, or agreement is regulated by paragraphs 1 and 6 of the Pennsylvania decree and the practices which are alleged in the New York petition to have vested this power in the Aluminum Company are regulated in comprehensive terms by paragraphs 1, 6, and 7 of the Pennsylvania decree.

Paragraphs 102 and 103 (R. 132) of the New York petition set forth no additional wrongful acts. They recite the effect of the previously alleged wrongful acts, the desirability of free competition to the end that the existing monopoly should be destroyed, and that all the defendants should be restrained from continuing the various wrongful practices, very much as set forth in paragraph XIV (R. 28-30) of the Pennsylvania petition.

Thus each paragraph in the New York petition which purports to charge a violation of law deals with a charge which, if true, is not only paralleled by a similar charge in the 1912 petition but is enjoined by specific paragraphs of the Pennsylvania decree.

As Judge Gibson aptly pointed out in his opinion in the case at bar (R. 152):

> "The injunctive relief granted in the decree in this District (the consent decree) might well answer all the prayers of the New York petition except that for the dissolution of the Company. Dissolution of

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formance of the illegal portions of which was specifically enjoined by paragraph 3 (R. 67) of the Pennsylvania decree.

Paragraph 90 (R. 124) of the New York petition complains of a contract between Aluminum Company and Gustave A. Kruttschnitt and James C. Coleman, the performance of the illegal portions of which was specifically enjoined by paragraph 5 (R. 68) of the Pennsylvania decree.

the defendant, it will be remembered, was made the subject matter of a supplemental bill in United States v. International Harvester Co., supra."

3. THE GOVERNMENT'S ATTEMPTED DISTINCTION OF THE PETITIONS. The Government contended in the Court below that the two petitions do not present substantially identical issues and subject matter because in the New York suit (1) additional parties defendant have been named; (2) additional relief is sought against the Aluminum Company; and (3) facts occurring subsequent to 1912 are averred. It is submitted that these distinctions are without legal significance on the issue of whether the law officers of the United States should be restrained from proceeding against the Aluminum Company in the New York action.

A. *New parties.* There are 63 parties defendant* in the New York suit, of whom the Aluminum Company is one, and only the Aluminum Company in the Pennsylvania suit. The Aluminum Company is *not* seeking to enjoin the law officers of the Government from proceeding in New York against anyone but itself, its officers, directors, and 100% subsidiaries, all of whom are bound by the explicit terms of the Pennsylvania decree. The Aluminum Company is *not* seeking to restrain the prosecution of the New York suit against its stockholders to compel them to divest themselves of their Aluminum Company stock or their holdings in Aluminium Limited nor is it seeking to enjoin the prosecution of the suit against any of the corporations or individuals not parties to or bound by the Pennsylvania decree.

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* Twenty of the corporate defendants are 100% subsidiaries and 19 individual defendants are present or former officers or directors of Aluminum Company.

The joinder of these additional parties cannot have the legal effect of permitting the United States to ignore the Pennsylvania decree against Aluminum Company and proceed *de novo* as to it: *Thompson v. Roberts,* 24 How. 233, 241 (1860, opinion by Mr. Justice Grier); *Green v. Bogue,* 158 U. S. 478, 503 (1895, opinion by Mr. Justice Shiras). In *Thompson v. Roberts,* this Court ruled (p. 241):

> "The objection that the parties were not the same in both suits cannot be sustained.
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> . . . . . .
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> ". . . No good reason can be given why the parties in this case, who litigated the same question, should not be concluded by the decree, because others having an interest in the question or subject-matter were admitted by the practice of a court of chancery to assist on both sides."

Needless to say, it makes no difference whether the added parties are in the first or second suit: 1 *Freeman on Judgments,* Section 417.

There is no hardship in such a rule, for the Expediting Court, in whose hands the Pennsylvania suit has now been placed, may permit the Government to add as parties defendant every party to the New York suit (Section 5 of the Sherman Act, *infra,* p. 62), and it may decree supplemental relief in the Pennsylvania suit either with or without addition of other parties defendant, including the dissolution of the Aluminum Company, assuming that the Government can make out a case on the merits (*infra,* pp. 31-33).

B. *Additional relief.* In the Pennsylvania suit an injunction was sought (R. 31-36), while in the New York suit the Government seeks both an injunction (R. 133)

and a dissolution (R. 134) of the Aluminum Company.* The prayer for dissolution is simply a request for additional relief. It in no wise changes the conclusive effect of the Pennsylvania suit. Were it otherwise, it would be a simple matter to avoid the binding effect of any decree. Furthermore, dissolution could have been decreed under the general prayer in the Pennsylvania petition: 4 *Cyclopedia of Federal Procedure,* Section 1048, at pages 71-73.

In *Green v. Bogue, supra,* 158 U. S. 478, 502, it was ruled:

> ". . . we do not deem the fact that a different form or measure of relief is now asked deprives the defendants in error of the protection of the prior findings and decree in their favor."

A ruling to the same effect is found in *Fidelity & Deposit Company v. Gaston, Williams & Wigmore,* 13 F. (2d) 267, 268 (S. D. N. Y., 1926, opinion by Judge Bondy), where it was held:

> "The mere fact that the complainant changes his prayer for relief does not affect the decree in the former suit as a bar to this suit. See Green v. Bogue, 158 U. S. 478, 15 S. Ct. 975, 39 L. Ed. 1061; In re Samuels (C. C. A.) 263 F. 561; Coleman v. Apple (C. C. A.), 298 F. 718."

The authorities are summarized in 2 *Freeman on Judgments,* Section 683, as follows:

> "If the claim or cause of action is substantially the same in both actions it is not material that the relief demanded is in some measure different."

In the Court below, the Government was able to cite no case to the contrary which was not fundamen-

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*The prayer in the New York petition for relief against the stockholders of Aluminum Company is not material here, because no attempt is made to enjoin the prosecution of the action as to them.

tally different in that the party unsuccessfully sought to be bound in those cases by an earlier decree was not a party to the first decree or that the relief sought in the second case was not the kind of relief which the court could have granted in the first case. We have no quarrel with such cases, for it cannot be argued that dissolution could not have been or may not yet be sought and obtained upon a proper showing in the Pennsylvania suit.

C. *New facts.* The Government claims that a great many of the 100% subsidiaries of Aluminum Company who are parties defendant in the New York suit were created after the Pennsylvania decree and that a great many of the alleged facts set forth in the New York petition occurred subsequent to 1912. Conceded. But it does not follow that the issues and subject matters are dissimilar for this reason. Witness the supplemental decree of October 25, 1922, passing upon property acquisitions taking place in 1922. If there were merit to the Government's contention, there could be no such thing as an injunction to operate prospectively on situations defined as to consequence but not otherwise in being. **The Pennsylvania decree was not confined to then existing situations but was designedly drawn as a comprehensive and permanent regulation of the future.**

As a demonstration of this, let the agreements which are alleged in the New York petition to have been made since 1928 between Aluminum Company and Aluminium Limited and between Aluminium Limited (allegedly on behalf of Aluminum Company) and others (paragraphs 74 to 81, R. 117-120), be tested by the decree. The invalidity asserted in regard to such alleged agreements is their restraint upon the importation of aluminum into the United States. Such

restraining agreements, in any garb, are clearly prohibited by paragraph 1 of the Pennsylvania decree (R. 64-65, quoted *infra*, pp. 65-66), although Aluminium Limited was not formed until 1928.

Identity of causes of action does not depend upon identity of facts. This is shown by *Baltimore Steamship Co. v. Phillips*, 274 U. S. 316, 321 (1927, opinion by Mr. Justice Sutherland), where this Court said:

> "A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show. The number and variety of the facts alleged do not establish more than one cause of action so long as their result, whether they be considered severally or in combination, is the violation of but one right by a single legal wrong. The mere multiplication of grounds of negligence alleged as causing the same injury does not result in multiplying the causes of action. 'The facts are merely the means, and not the end. They do not constitute the cause of action, but they show its existence by making the wrong appear. "The *thing*, therefore, which in contemplation of law as its *cause*, becomes a ground for action, is not the group of *facts* alleged in the declaration, bill, or indictment, *but the result of these in a legal wrong, the existence of which, if true, they conclusively evince.*"' *Chobanian v. Washburn Wire Company*, 33 R. I. 289, 302." (Italics by this Court).

A fortiori must this be true of a cause of action culminating in a regulatory decree of an ever changing business, a decree characterized in *United States v. Swift & Co.*, 286 U. S. 106, 114 (1932, opinion by Mr. Justice Cardozo), as:

> "A continuing decree of injunction directed to events to come. . . . . The distinction is be-

tween restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative."

The Pennsylvania decree is admittedly of the latter character.

II.

The Law Officers of the United States Should Be Enjoined from Proceeding in the New York Suit.

1. THE EQUITY OF SUCH AN INJUNCTION IS STRONG.

The United States, through its law officers, is attempting to prosecute the Aluminum Company in the New York suit on matters which are fully regulated by continuing decree of the Pennsylvania Court. That is unjust to both courts and prejudicial to the Aluminum Company.

If the courts permit themselves to be maneuvered into this position, they are in danger of an unseemly conflict over a subject matter which by the voluntary act of the United States has been entrusted to the Pennsylvania Court.

The Aluminum Company stands in peril of regulation by decrees of two independent courts operative at the same time on the same subject matter. The Aluminum Company has relied upon the Pennsylvania decree for 25 years as a guide in its business conduct and in 1922 it spent large sums of money in the acquisition of properties upon the strength of a supplemental decree (R. 77) of the Pennsylvania Court. Hereafter it will be necessary to submit such matters to both courts, assuming that the New York Court were to enter an in-

junction order comparable in scope to the Pennsylvania decree.

If the Government is correct in its theory that it may proceed against the Aluminum Company in the New York suit, the following extraordinary situation results: Whatever the decree in the New York suit may be, the Government can still relitigate the same charges thereafter in the Pennsylvania suit by contempt proceedings or even by a supplemental application for dissolution filed in the Pennsylvania suit. If, after a hearing on the merits in the New York suit, the New York Court should either dismiss the petition or grant the relief prayed for, the above mentioned situation will exist because the Pennsylvania decree remains in full force and effect, regardless of the New York decision. Surely such a situation should not be permitted to arise.

We do not contend that the Pennsylvania decree is a contract, although it was entered by consent. We recognize full well the power of the Pennsylvania Court to change its decree in any appropriate way, even to the extent of dissolving the Aluminum Company. However, we do urge, with deference, that the Pennsylvania decree should not be enlarged in any way without a showing by the Government that there is a need for such further relief. Until such a showing has been made the Aluminum Company is entitled to rely upon the Pennsylvania decree. This position is justified by *United States v. International Harvester Co.*, 274 U. S. 693, 703 (1927, opinion by Mr. Justice Sanford) where this Court said of another consent decree:

> "And a construction of this decree by which, although its requirements have been fully complied with and lawful competitive conditions established, the United States would nevertheless be entitled to further relief by the division of the International

> Company into separate and distinct corporations for the purpose of restoring the actual competitive conditions that had existed sixteen years before the entry of the consent decree, would plainly be repugnant to the agreement approved by the court and embodied in the decree, which has become binding upon all parties, and upon which the International Company has, in the exercise of good faith, been entitled to rely." (Emphasis added).

And to add to the inequity of the situation, the United States now proposes to try the Aluminum Company for its very life at a point distant from its principal office. It appears on the face of the New York petition that the principal offices of Aluminum Company and the place of residence of practically all the officers and directors of that company are in or about the City of Pittsburgh (R. 96, 102). The testimony to this effect was uncontradicted (R. 215, 226). The books and records of the company covering a period of approximately fifty years are also located in or near the City of Pittsburgh. The business operations of the company depend upon the continued presence of the officers at their usual place of business and of the books and records of the company at points where they are accessible in the daily operation of that business. The trial of the Government's charges in New York rather than in Pittsburgh will make it unnecessarily difficult either to defend properly the charges or to carry on the Company's business in an orderly manner. This situation is fully developed in Judge Gibson's findings (R. 145-147). The Expediting Court was unimpressed (R. 185) with the argument and made no findings on the point.

The Aluminum Company is not seeking an injunction on the ground of inconvenience but upon the much more fundamental proposition that it should not be en-

joined for the same acts by two independent courts of coordinate jurisdiction. It points out the inconvenience of suit in New York simply as an additional factor to be weighed.*

There is no countervailing hardship upon the United States, for if it were enjoined from proceeding in New York, it is left with two alternatives which, we submit, are entirely adequate: (1) It may enforce the decree that it has obtained; or (2) it may reopen the Pennsylvania suit by supplemental proceeding and seek any kind of relief that appears suitable, including dissolution of the Aluminum Company.

The first alternative needs no comment. As to the second, the Government, if it were so minded, could proceed by supplemental petition in the Pennsylvania suit, repeating in such supplemental petition every averment contained in the New York petition and, by invoking Section 5 of the Sherman Act (hereinafter quoted in Appendix A, *infra,* p. 62); join every one of the sixty-two defendants added to the New York suit as defendants to the Pennsylvania suit.

The Pennsylvania court has full power to modify its existing decree by force of principles, inherent in the jurisdiction of the chancery, a continuing decree of injunction directed to events to come being subject always to adaptation as events may shape the need. This Court so ruled in *United States v. Swift & Co., supra,* 286 U. S. 106, 114-115, Mr. Justice Cardozo stating for this Court:

"We are not doubtful of the power of a court

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* Injunctions have been granted on the sole ground that a suit has been brought in a jurisdiction, admittedly having jurisdiction over the parties, but unnecessarily inconvenient and vexatious: *Bankers Life Co. v. Loring,* 217 Iowa 534, 250 N. W. 8 (1933, opinion by Mr. Justice Anderson); *Reed's Administratrix v. Illinois Central R. R. Co.,* 182 Ky. 455, 206 S. W. 794 (1918, opinion by Judge Carroll).

of equity to modify an injunction in adaptation to changed conditions though it was entered by consent. The power is conceded by the Government, ... Power to modify the decree was reserved by its very terms, ... If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need. . . . The distinction is between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative. . . . The result is all one whether the decree has been entered after litigation or by consent. . . . In either event, **a court does not abdicate its power to revoke or modify its mandate if satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong.**" (Emphasis added.)

In another historic anti-trust litigation, *United States v. American Can Co.*, 234 Fed. 1019 (D. Md., 1916, opinion by Judge Rose), the Court pointed out that if an injunction should prove ineffective, the Government could always reopen the proceeding and move for a dissolution, stating (p. 1021):

> "It is, of course, possible that these forecasts of the future may not be realized. In that event the retention of jurisdiction will enable the government promptly and cheaply to compel a dissolution whenever anything which defendant may hereafter do, or whenever anything which may hereafter happen makes such action necessary or expedient."

There would be nothing novel in proceeding by such supplemental petition in the Pennsylvania Court. The novelty is presented in starting a second suit to litigate that which is already under regulation by the Pennsylvania Court. So far as careful search has revealed to us, this is the first case involving substantial identity of subject matter in which the United States has failed to proceed by supplemental petition in the court where jurisdiction was originally invoked. For example: Among the oil companies separated by the Standard Oil dissolution decree of 1911 were the Standard Oil Company of New York and the Vacuum Oil Company. When these two companies sought to merge nineteen years later, the Government proceeded by supplemental petition in the court having original jurisdiction to enjoin the merger as a violation of the 1911 decree: *United States v. Standard Oil Company of New Jersey,* 47 F. (2d) 288 (E. D. Mo., 1931, opinion by Judge Stone).

Again, when the United States became dissatisfied with the efficacy of an anti-trust decree obtained against the International Harvester Company in 1918 as a result of a petition filed in 1912, it did not start a new proceeding but, in 1923, filed a supplemental petition in the old action, praying that the original decree be reopened and amended to the end that the International Harvester Company might be dissolved: *United States v. International Harvester Co., supra,* 274 U. S. 693.

When the large meat packers became dissatisfied with the anti-trust decree entered against them in 1920, they proceeded ten years later by a petition in the original action to seek a modification of that decree: *United States v. Swift & Co., supra,* 286 U. S. 106.

In each of the foregoing cases the court entertained and decided the supplemental petitions on their merits.

On what premise can one justify a second decree in another Court? Complaint cannot be found with the administration of the decree by the Pennsylvania Court. The United States consented to the original decree and its clarification in 1922 (R. 73, 78). There have been no other actions under it.

There is no doubt that in 1912 the Aluminum Company was, and that it still is, the only producer of virgin aluminum in this country. So long as that condition exists the company must be subject to regulation and control by the courts. That is precisely what the Pennsylvania decree accomplished. The restrictions and regulations of that decree continue indefinitely. They are in terms designed to include new facilities and new methods. It is only when "substantial competition has arisen, either in the production or sale of aluminum in the United States" that the company may petition the court to modify the decree and then only once in three years (R. 72). The Government has the right to seek enlargement or enforcement of the decree at any time.

In the future, proceedings in the Pennsylvania suit must be handled by the available Circuit Judges sitting as a statutory Expediting District Court. This should be satisfactory to the Government, for it was its act in filing the Expediting Certificate that removed this case permanently, in all its present and future aspects, including interpretation and enforcement and amplification or modification, to the available Circuit Judges. The Expediting Act (Appendix C, *infra*, pp. 63-65) and the Expediting Certificate (R. 157) show that the Pennsylvania suit has henceforth been turned over to the Expediting Court.

2. It was the duty of the Pennsylvania Court to grant such an injunction.

The right and the duty of the Pennsylvania Court, having first acquired jurisdiction of the cause of action, to restrain proceedings by the Government in the New York Court to relitigate the same questions, is well established. It is predicated on two grounds: (1) The duty of the Pennsylvania Court to protect its jurisdiction over the subject matter entrusted to it and thereby prevent the possibility of a conflict of authority; and (2) the duty of all courts to prevent parties litigant from being harassed by relitigation of matters once determined. The right and duty to preserve jurisdiction is predicated both upon powers inherent in a court of equity and upon statute*. The prevention of relitigation of matters once determined goes beyond the relitigation of issues which are *res adjudicata*. This is developed in the cases which follow:

Kessler v. Eldred, 206 U. S. 285 (1907, opinion by Mr. Justice Moody), illustrates the fact that injunctions are not limited to the prosecution of cases which raise issues which are *res adjudicata*. There Kessler, defendant in a patent infringement suit, had obtained a dismissal of the action. Subsequently the plaintiff, Eldred, sued certain of Kessler's customers, whereupon Kessler sought but was refused an injunction against further prosecution of such suits. This ruling was reversed on appeal, this Court ruling that Kessler was entitled to an injunction, stating (p. 289):

> "If rights between litigants are once established by the final judgment of a court of competent jurisdiction those rights must be recognized in every way,

*Section 262 of the Judicial Code, which authorizes United States courts "to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions."

and wherever the judgment is entitled to respect, by those who are bound by it."

This Court held it unnecessary to determine whether the principle of *res adjudicata* was applicable, inasmuch as the injunction was justified on the broader ground that the subject matter of both suits had been litigated in the first and that Kessler was, by the implications of the first judgment, fairly entitled to have his customers free from suit. The exclusion of the issue of *res adjudicata* was in these words (p. 288):

"Whether the judgment between Kessler and Eldred is a bar to the suit of *Eldred v. Breitwieser*, . . . we deem it unnecessary to inquire. . . . It may be that the judgment in *Kessler v. Eldred* will not afford Breitwieser, a customer of Kessler, a defense to Eldred's suit against him. Upon that question we express no opinion."

This Court held in *Looney (Attorney General of Texas) v. Eastern Texas R. R. Co.*, 247 U. S. 214, 221 (1918, opinion by Mr. Justice Clarke), that:

"The use of the writ of injunction, by federal courts first acquiring jurisdiction over the parties or the subject-matter of a suit, for the purpose of protecting and preserving that jurisdiction until the object of the suit is accomplished and complete justice done between the parties, is familiar and long established practice . . . ."

A comparable ruling was made in *Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co.*, 294 U. S. 648 (1935, opinion by Mr. Justice Sutherland), wherein the power of a court of bankruptcy as a court of equity to protect its jurisdiction by injunction was sustained. In this case the injunction applied to threatened sales of collateral under contracts between the bankrupt railroad and certain

banks. It was not contended that the rights of the banks had been adjudicated by the bankruptcy court. Rather, the injunction was founded on the right of the bankruptcy court to preserve exclusive jurisdiction of the property of the railroad. It was said of bankruptcy courts and their right to issue injunctions that (p. 675-676):

"They are essentially courts of equity, and their proceedings inherently proceedings in equity. . . . Their adjudications and orders constitute in all essential particulars decrees in equity. . . . The power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction is, therefore, inherent in a court of bankruptcy, as it is in a duly established court of equity. Section 262 of the Judicial Code, which authorizes the United States courts 'to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions' recognizes and declares the principle. An example of its application is found in *Kline v. Burke Construction Co.*, 260 U. S. 226, 229, where we held that a federal court, having first acquired jurisdiction of the subject matter, could enjoin the parties from proceeding in a state court of concurrent jurisdiction 'where the effect of the action would be to defeat or impair the jurisdiction of the federal court.' An injunction may be issued in such circumstances for the purpose of protecting and preserving the jurisdiction of the court 'until the object of the suit is accomplished and complete justice done between the parties.' *Looney v. Eastern Texas R. Co.*, 247 U. S. 214, 221."

In *Steelman, Trustee v. All Continent Corporation*, 301 U. S. 278 (1937, opinion by Mr. Justice Cardozo), this Court reinstated an action of the District Court of

the United States for the District of New Jersey, acting in bankruptcy, enjoining the prosecution of a subsequent litigation in the District Court of the United States for the Eastern District of Pennsylvania brought by a party other than the bankrupt to remove a cloud on the record title to certain assets in which the trustees in bankruptcy appointed by the New Jersey Court claimed an interest. After a full discussion of the applicable authorities this Court, speaking by Mr. Justice Cardozo, reinstated the injunction and, in commenting on the authority of the District Court to issue it, said (p. 289):

> "'. . . this court has said that 'the power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction is . . . inherent in a court of bankruptcy, as it is in a duly established court of equity.'"

Further (pp. 290-291):

> "Much of the argument for the respondent has been directed to a showing that the suit in Pennsylvania is not subject to restraint for defect of jurisdiction, and this for the reason that the *res* to be affected—the securities held by Sparks & Co. in their office in Philadelphia—had not come within the actual or constructive possession of the court of bankruptcy in New Jersey when the suit was begun to remove the cloud upon title. . . . The argument misconceives the grounds upon which the trustee looks to us for aid. The trustee does not challenge the jurisdiction of the federal court in Pennsylvania, if the word jurisdiction be taken in its strict and proper sense. . . . He is not seeking a writ of prohibition directed to the court itself. He is not seeking an injunction to vindicate his exclusive control over a *res* in his possession, or in the possession, actual or constructive, of the court that

appointed him. . . . What he seeks is an injunction directed to a suitor, and not to any court, upon the ground that the suitor is misusing a jurisdiction which by hypothesis exists, and converting it by such misuse into an instrument of wrong. . . . We are unable to yield assent to the statement of the court below that 'the restraint of a proper party is legally tantamount to the restraint of the court itself.' The reality of the distinction has illustration in a host of cases."

The above quotation and other authorities herein cited show that the right to enjoin further proceedings interfering with jurisdiction is not limited to proceedings *in rem*.

It was not only within the power of the Pennsylvania Court to issue an injunction, it was its duty to do so. This is because it was not only called upon to protect its own jurisdiction so that the possibility of conflict between courts might be avoided, but it was asked to save a litigant from the peril of concurrent decrees of independent courts on the same subject matter. The obligation, as well as the right, to issue an injunction was held to exist in *Iron Mountain R. Co. v. Memphis*, 96 Fed. 113 (C. C. A., 6th Circ., 1899, opinion by Judge Taft). Here a federal circuit court had granted an injunction to prevent the city from enforcing against the railroad company an ordinance relating to the occupancy of streets. The city countered by an action of ejectment in the state courts, whereupon the railroad, by supplemental bill in the federal circuit court, sought an injunction against the prosecution of the state court actions. The injunction was refused, but this action was reversed on appeal, Judge Taft ruling (pp. 131-132):

". . . inasmuch as the suit had been brought a considerable time before the state suits were

> brought, it justified and required the court below to enjoin the suits in the state court as an impairment of its jurisdiction over the controversy with which it had been invested by the filing of the bill . . . the court below should have permitted the filing of the supplementary bill, and should have granted the injunction to restrain the suits in the state court." (Emphasis added.)

The principle of the foregoing cases has been successfully invoked by the Tennessee Valley Authority to prevent religitation, in the District Court of the United States for the Middle District of Tennessee, of questions allegedly ruled by an earlier suit against the Tennessee Valley Authority in the District Court of the United States for the Northern District of Georgia: *Georgia Power Co. v. Tennessee Valley Authority,* 17 F. Supp. 769 (N. D. Ga., 1937, opinion by Judge Underwood). After the Georgia Court had refused a temporary injunction, the plaintiff and 18 others filed a substantially similar suit in Tennessee, whereupon the Tennessee Valley Authority filed a petition in the Georgia proceeding asking that the Georgia Power Company be restrained from participating in the Tennessee suit. The Georgia Court issued such an injunction, ruling (pp. 770-771):

> "It is not only the right but the duty of this court to protect its jurisdiction and to effectuate its orders and decrees. 'The use of the writ of injunction, by federal courts first acquiring jurisdiction over the parties or the subject-matter of a suit, for the purpose of protecting and preserving the jurisdiction until the object of the suit is accomplished and complete justice done between the parties is familiar and long established practice.' Looney v. Eastern Texas R. R. Co., 247 U. S. 214, 221 . . . .

"Furthermore, 'The jurisdiction of courts of equity to interfere and effectuate their own decrees by injunctions or writs of assistance, in order to avoid the relitigation of questions once settled between the same parties is well settled.' Root v. Woolworth, 150 U. S. 401, 411, 412, 14 S. Ct. 136, 139, 37 L. Ed. 1123. See, also, Continental Illinois Nat. Bank & Trust Co. v. Chicago, Rock Island & P. Ry. Co., 294 U. S. 648, 675, 676, 55 S. Ct. 595, 79 L. Ed. 1110." (Emphasis added.)

This ruling was affirmed, 89 F. (2d) 218 (C. C. A. 5th Circ., 1937, opinion by Judge Foster), the court ruling (p. 221):

"Rarely has a conflict arisen between two federal courts in a civil case. With regard to conflicts between state and federal courts, which occur frequently, the rule is so well settled as to be considered elementary. There is no logical reason why it should differ as to Federal Courts. Compare In re Johnson, 167 U. S. 120, 17 S. Ct. 735, 42 L. Ed. 103. In Harkrader v. Wadley, 172 U. S. 148-163, 19 S. Ct. 119, 125, 43 L. Ed. 399, it was said: '. . . When a state court and a court of the United States may each take jurisdiction of a matter, the tribunal where jurisdiction first attaches holds it, to the exclusion of the other, until its duty is fully performed and the jurisdiction involved is exhausted; and this rule applies alike in both civil and criminal cases.'

"We consider the just stated rule applies with equal force in conflicts between federal courts in civil cases where the jurisdiction is concurrent. While the federal courts in Georgia and Tennessee had concurrent jurisdiction over the parties and the subject matter of the suit, it is beyond dispute that

> the jurisdiction of the federal court in Georgia first attached. We find no abuse of discretion in the refusal of that court to permit plaintiff to dismiss the suit. **It necessarily follows that that court, having prior jurisdiction of the cause, as between plaintiff and defendant, was authorized to issue an interlocutory injunction to preserve its jurisdiction."** (Emphasis added.)

A writ of certiorari was refused by this Court on October 11, 1937.

The equity in favor of enjoining the law officers of the United States in the case before us is much stronger than it was in favor of enjoining the Alabama Power Company in the TVA case. In the TVA case the Alabama Power Company had been denied a preliminary injunction in the Georgia court and on the basis of that preliminary ruling was restrained from seeking an injunction elsewhere. In the case at hand the Pennsylvania suit has proceeded to a final decree on the merits and the injunction is sought to prevent a reopening of the matters governed by that decree in another court of concurrent and independent jurisdiction.

The TVA still more recently has secured another injunction in the District Court of the United States for the Northern District of Alabama, entered pursuant to the prayers of an ancillary bill filed, after the return of the mandate, in the case of *Ashwander et al. v. Tennessee Valley Authority et al.*, 297 U. S. 288 (1936, opinion by Mr. Chief Justice Hughes). Upon receipt of the mandate of this Court the District Court for the Northern District of Alabama entered a final decree on March 19, 1936, from which no appeal was taken. On May 29, 1936, the Alabama Power Company, together with eighteen other utilities, filed a bill for an injunction in the Chancery Court of Knox County, Tennessee,

which was later removed to the District Court of the United States for the Eastern District of Tennessee, Northern Division, and styled "The Tennessee Electric Power Company et al. v. Tennessee Valley Authority et al." On April 1, 1937, the ancillary bill above mentioned was filed by the Tennessee Valley Authority in the *Ashwander* case in the Northern District of Alabama, seeking to enjoin the Alabama Power Company from further participation in the Tennessee case. An injunction was granted on April 15, 1937, supported by an opinion of District Judge Davis. The case is now on appeal in the United States Circuit Court of Appeals for the Fifth Circuit at its No. 8469.

A recent case in which the authorities are well reviewed in *Trees v. Glenn,* 319 Pa. 485, 181 Atl. 447 (1935, opinion by Mr. Justice Schaffer). The court stated, 319 Pa. at pages 490-491:

> "Appellant's counsel argue that equity will refuse to enjoin a party from proceeding in equity. They are mistaken in this. Under certain conditions an equity court will issue its process to restrain a litigant from proceeding in another equity tribunal. The general governing principle is thus stated in 14 R. C. L., page 410: 'The theory on which a court of equity acts in enjoining a proceeding in another court of coordinate jurisdiction is that it has jurisdiction in personam, and that so acting, it has power to require the defendant to do, or to refrain from doing, anything beyond the limits of its territorial jurisdiction, which it might require to be done or omitted within the limits of such territory. In such a case it may restrain a party from prosecuting a subsequent suit in another jurisdiction, whether the objects of the two suits are the same or not, if the effect of the second suit

is to withdraw from the court first acquiring jurisdiction a part of the subject-matter of the first suit. When an injunction is granted for this purpose, it is in no just sense a prohibition to those courts in the exercise of their jurisdiction. It is not addressed to them and does not even assume to interfere with them. The process is directed only to the parties. It neither assumes any superiority over the court in which the proceedings are had, nor denies its jurisdiction.'" (Emphasis added.)

The Government, in the Court below, attempted to whittle down this long-established practice by taking the position that such cases apply only where the second court is asked to reverse the first court, but not to cases where the second court is asked to supplement or amplify the decree of the first court.

The answers to this contention are many. In the first place the authorities do not support it. There was no such showing made or attempted before the injunction was granted in *Steelman, Trustee v. All Continent Corp., supra,* 301 U. S. 278, and indeed there was no reason to believe that in that case both courts would not decide the matter in exactly the same way, for neither court had passed upon the merits of the controversy. There was no such showing in *Looney v. Eastern Texas R. R. Co., supra,* 247 U. S. 214, or in *Georgia Power Co. v. Tennessee Valley Authority, supra,* 89 F. (2d) 218, for in these cases the first court had merely denied a temporary injunction without passing in any way upon the propriety of a permanent injunction. To the best of our knowledge **no court has ever predicated its injunction on the narrow circumstance that the second court is asked, in the first instance, to reverse what the first court has done.**

Furthermore, it is a matter of common knowledge that cases are not necessarily decided in accordance with the prayers of a plaintiff's bill, and once the jurisdiction of two courts has attached to the same subject matter, it is not only possible but probable that in the course of extended litigation or resulting regulation the courts will take contrary positions on the same matters. Conflicts between Circuit Courts of Appeals on matters of law are common. How much more inevitable would be conflicts between two courts on issues of fact and the interpretation of facts incident to continuing regulation by Court decree. It is the necessity for preventing this possibility of conflict between courts, quite as much as anything else, that has motivated the decisions heretofore cited, *supra,* pp. 35-44.

Nor is it sufficient answer to assert, as did the Government in the Court below, that the Aluminum Company's only remedy is by a plea in bar in the New York suit. A defendant cannot be compelled to proceed on the assumption that the second court will protect him. A litigant is entitled to protection from the peril, however remote, of repeated or conflicting adjudications of the same question between the same parties. It should also be remembered that it is the right and duty of the Pennsylvania Court to protect its jurisdiction, voluntarily invoked by the Government.

III.

The Law Officers of the United States were Properly before the Pennsylvania Court.

1. THE LAW OFFICERS OF THE UNITED STATES WERE SUBJECT TO THE ORDERS OF THE PENNSYLVANIA COURT REGARDLESS OF WHETHER THEY HAD BEEN JOINED AS DEFENDANTS OR WHERE THEY WERE SERVED WITH NOTICE.

The law officers of the United States were brought before the Pennsylvania Court "in their official capacities", as may be seen from paragraph 2 of the order of the Pennsylvania Court entered on April 29, 1937 (R. 135). In such official capacities they are the law officers for the United States, which **voluntarily submitted itself to the jurisdiction of the Pennsylvania Court** when it filed its petition against the Aluminum Company of America and obtained the decree of 1912. The Government was represented at that time by the then Attorney General, George W. Wickersham, two of his assistants and the United States Attorney for the Western District of Pennsylvania, all of whom signed the Government's Pennsylvania petition (R. 36). Their successors in office are in privity with them* and were therefore subject to the jurisdiction and orders of the Pennsylvania Court by the voluntary act of their predecessors in office. Otherwise, a litigant might escape the jurisdiction of a court by the simple expedient of changing attorneys. **They could have been brought before the Pennsylvania Court by simple notice because they were already subject to the orders of the Court in the Pennsylvania suit.** But more was done, for a subpoena

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* *New Orleans v. Citizens' Bank*, 167 U. S. 371, 388-389 (1897, opinion by Mr. Justice White); *Gunter v. Atlantic Coast Line R. R. Co.*, 200 U. S. 273, 283-289 (1906, opinion by Mr. Justice White); 1 *Freeman on Judgments*, § 502:—"Successor and predecessor, in relation to offices, are considered to be in privity with each other, like heir and ancestor."

and a copy of the petition were formally served by the Marshal for the Western District of Pennsylvania upon the United States District Attorney for that District, who is the local representative of the Attorney General in the institution of proceedings in equity under the Sherman Anti-Trust Act, Section 4, quoted hereinafter in Appendix A at page 62. Additional service was effected upon the other law officers by service in their respective districts by the marshals thereof. This was more than sufficient. The law to this effect is old and well established. It was ruled in *Logan v. Patrick,* 5 Cranch 288, (1809, opinion Per Curiam), quoting from the syllabus:

> "The circuit court has jurisdiction, in a suit in equity, to stay proceedings upon a judgment at law between the same parties, although the *subpoena* be served upon the defendant out of the district in which the court sits."

The theory of this line of authority is that the bill to enjoin is an ancillary proceeding and that, therefore, the court has jurisdiction of the subject matter and the parties without reference to the usual requirements of jurisdiction or service. This was ruled in *Freeman v. Howe,* 24 How. 450, 460 (1861, opinion by Mr. Justice Nelson), where it was said:

> "The principle is, that a bill filed on the equity side of the court to restrain or regulate judgments or suits at law in the same court, and thereby prevent injustice, or an inequitable advantage under mesne or final process, is not an original suit, but ancillary and dependent, supplementary merely to the original suit, out of which it had arisen, and is maintained without reference to the citizenship or residence of the parties."

The Cortes Co. v. Thannhauser, 9 Fed. 226 (C. C. S. D. N. Y., 1881, opinion by Judge Blatchford), is a leading case. That case involved service in and jurisdiction of an action in equity to restrain an action at law, and the court said in that case, at pages 227-228 (and it would be true *a fortiori* in this case):

> "It is a well-settled principle that a bill filed on the equity side of a court, to restrain or regulate a judgment or a suit at law in the same court, is not an original suit, but ancillary and dependent, and supplementary merely to the original suit; and that such a bill can be maintained in a federal court without reference to the citizenship or the residence of the parties. Logan v. Patrick, 5 Cranch, 288; Dunn v. Clarke, 8 Pet. 1; Clarke v. Mathewson, 12 Pet. 164; Freeman v. Howe, 24 How. 450, 460. On this principle the equity suit, not being an original suit, the process or notice issued on its being brought, to advise the plaintiff in the suit at law that it has been brought, is not regarded as original process or as an original proceeding. **Such plaintiff is in court, voluntarily, for the purpose of prosecuting his suit at law and obtaining a judgment, and thereby makes himself subject to any control the court may find it equitable to exercise over his suit at law and over the matters involved in it, to the extent of perpetually staying its prosecution, if, on equitable considerations, that ought to be done. All that is requisite is that the plaintiff in the suit at law should have notice from the court of the institution of the proceeding in equity. . . .** He is in court, for the purposes of the action of the court on the subject-matter of the proceeding in equity, by having become the plaintiff in the suit at law. He is represented, for the purpose of giving notice to him of the institution of such proceedings,

by his chosen attorney in the suit at law." (Emphasis added.)

O'Connor v. O'Connor, 146 Fed. 994, 996-997 (C. C. W. D. Tex., 1906, opinion by Judge Maxey), is another such case.

The right and duty of a court to treat parties before it in an original proceeding as still subject to its jurisdiction for purposes of a supplemental proceeding is even plainer in the case at bar, because the supplemental proceeding is a part of the very equity action which the United States instituted.

The 1937 injunction petition in the Pennsylvania suit was necessarily a supplemental or ancillary proceeding in the existing litigation. Unless this is correct, it was not a proceeding **"wherein the United States is complainant"** (which is a requisite under the terms of the Expediting Act, quoted *infra,* pp. 63-65), and there is therefore no basis for treating it as expedited under that Act and thereby transferring the final injunction hearing from Judge Gibson to the available Circuit Judges. The Attorney General necessarily treated the petition as ancillary to his Expediting Certificate (R. 157).

Furthermore, the Attorney General was correct in so doing, for the reason pointed out in 1 *Cyclopedia of Federal Procedure,* Section 121, where the situation is summarized as follows:

> **"Ancillary or auxiliary federal jurisdiction may be defined as that by which a federal court aids or completes the jurisdiction which it or another federal court has already obtained in the same or another and principal suit."** (Emphasis added.)

The author continues:

> "Technically therefore it is not jurisdiction of the case or controversy, which already exists, but remedial power and the measure of it, which power is exerted by means of an ancillary suit or proceeding. But while it is remedial power rather than jurisdiction of a case or controversy, yet the existence of ancillary power potentially is not dependent on the amenability of the parties to service of process."

Section 122:

> ". . . The rule that service of process or a notice is necessary to the exercise of jurisdiction, and that without it the resultant judgment is a nullity, speaks of the exercise of original jurisdiction and **has no application to the decision of a collateral question in a case where the parties are before the court.**" (Emphasis added.)

The matter is further developed in 3 *Cyclopedia of Federal Procedure,* Section 750, where the law is summarized as follows:

> "If the ancillary bill be for an injunction, it is not requisite that any subpoena or process be served on the defendants to such bill, plaintiffs to the main action, as a preliminary to the issuance of a temporary injunction.
>
> . . . . . .
>
> **"The service of such a notice is not limited to the district in which the ancillary suit pends,** but may be made outside of the district, preferably on the party or parties, it would seem, but by substitution on their attorney of record in the main suit. The court may order personal service on the party, in addition to substituted service on his attorney."

2. THE LAW OFFICERS OF THE UNITED STATES WERE MADE PARTIES DEFENDANT IN THE PENNSYLVANIA SUIT.

The law officers of the United States who are conducting the New York suit were already amenable to this Court's jurisdiction without formally being added as parties. Out of an abundance of caution, because of the importance of this case to the very life of the Aluminum Company, it petitioned that the present Attorney General and his assistants, in their official capacities, be formally added as parties (R. 90-91). This was ordered on April 29, 1937 (R. 135). The parties were added as *defendants* because of Equity Rule 37, hereinafter quoted in Appendix B at page 63. Authority for the order is found in Section 5 of the Sherman Anti-Trust Act, hereinafter quoted at page 62. The Expediting Court vacated the order (R. 185, 186) without explanation. It is submitted that if ever there was a case in which "the ends of justice" required that additional parties be brought before a tribunal it is this proceeding, where law officers of the United States were engaged in defeating the jurisdiction of a court voluntarily invoked by their predecessors in office.

Service was had upon the added parties (R. 150) at their respective offices in Washington, D. C., and New York City. Such extra-territorial service is authorized by Section 5 of the Sherman Act, *infra*, p. 62.

Service was also had upon the District Attorney for the Western District of Pennsylvania; as the docket entries show (R. 2, 4), and this without more would have been a sufficient service upon the Attorney General and his staff, because by the terms of Section 4 of the Sherman Anti-Trust Act the District Attorney is specifically made the agent of the Attorney General in the

prosecution of anti-trust actions in equity (quoted *infra*, p. 62).

3. THE UNITED STATES WAIVED ANY RIGHT TO CHALLENGE SERVICE OF PROCESS UPON ITS OFFICERS BY INVOKING THE EXPEDITING COURT.

If there were any doubt as to the jurisdiction of the Pennsylvania Court over the person of these particular law officers of the United States (which there is not), it is removed by the action of the Attorney General in bringing about the creation of a statutory Expediting District Court by filing an Expediting Certificate. True, he attempted (R. 159) to stand on a special appearance in so doing but it need hardly be argued that one cannot maintain a special appearance or deny the jurisdiction of a court over his person when that party by his own act has brought about the creation of a special court to hear his case. It has been quite universally ruled in comparable cases that such a move constitutes a waiver of the special appearance: cf. *Kelly v. Brown*, 310 Ill. 319, 141 N. E. 743 (1923, opinion by Mr. Chief Justice Farmer); *State ex rel. Engle v. Hilgendorf*, 136 Wis. 21, 116 N. W. 848 (1908, opinion by Mr. Justice Bashford).

We respectfully submit that the Attorney General and the other law officers of the United States should not be permitted to have their cake and eat it. They should not be permitted to speculate on the result of the final hearing before the Expediting Court, prepared to accept a favorable decree but in a position to resist the jurisdiction of the Court to make an unfavorable decree.

4. THIS APPLICATION FOR AN INJUNCTION IS NOT A SUIT AGAINST THE UNITED STATES, BUT IF IT WERE SUCH, THE PENNSYLVANIA COURT WOULD HAVE JURISDICTION TO ENTERTAIN IT AS AN ANCILLARY PROCEEDING IN THE PENNSYLVANIA SUIT.

A. The authority to enjoin a public official from the enforcement of an unconstitutional statute is well settled: *Ex parte Young*, 209 U. S. 123, 155-161 (1908, opinion by Mr. Justice Peckham). Likewise, the authority to enjoin a public official from performing an act beyond the scope of his authority, although not unconstitutional, is clear: *Santa Fe Pacific R. R. Co. v. Lane (Secretary of Interior)*, 244 U. S. 492 (1917, opinion by Mr. Justice Van Devanter); *Noble (Secretary of Interior) v. Union River Logging R. R. Co.*, 147 U. S. 165, 170-172 (1893, opinion by Mr. Justice Brown). On a parity of reasoning, a public official may be restrained from relitigating in a second forum issues pending or adjudicated in another forum: *Looney (Attorney General of Texas) v. Eastern Texas R. R. Co., supra*, 247 U. S. 214, 219-220; *Gunter (Attorney General of South Carolina) v. Atlantic Coast Line R. R. Co.*, 200 U. S. 273, 292 (1906, opinion by Mr. Justice White). The reasoning of the foregoing decisions is that the public official is acting beyond the scope of his proper authority and is therefore not to be regarded as cloaked with the immunity which might otherwise surround the sovereignty represented by him.

B. Conclusive as the foregoing authorities are believed to be, the Aluminum Company need not rely upon them, because if the present ancillary action is held to be one against the United States rather than its agents, the United States is properly a party to the ancillary action because it voluntarily invoked the juris-

diction of the court in filing the Pennsylvania suit. Being in court as a litigant, it, like any other party, must acquiesce in the complete jurisdiction of the Pennsylvania Court.

In *United States v. The Thekla*, 266 U. S. 328 (1924, opinion by Mr. Justice Holmes), the United States joined as libellant in an admiralty action and attempted to do so "without submitting itself to the jurisdiction" of the court (p. 338) but a decree was entered against it on a cross-libel for $120,619.71 with interest and costs. Sustaining the decree on appeal, this Court said (pp. 339-340):

> "We . . . are of opinion that the District Court had power to enter a decree for damages. When the United States comes into Court to assert a claim it so far takes the position of a private suitor as to agree by implication that justice may be done with regard to the subject matter."

Further (p. 341):

> "It is said that there is no statute by which the Government accepted this liability. **It joined in the suit, and that carried with it the acceptance of whatever liability the courts may decide to be reasonably incident to that act.**" (Emphasis added.)

In *People of Porto Rico v. Ramos*, 232 U. S. 627, 632 (1914, opinion by Mr. Justice McKenna), this Court ruled:

> ". . . . the immunity of sovereignty from suit without its consent cannot be carried so far as to permit it to reverse the action invoked by it and to come in and go out of court at its will, the other party having no right of resistance to either step."

To the same effect are *The Siren,* 7 Wall. 152 (1869, opinion by Mr. Justice Field), and *Carr v. United States,* 98 U. S. 433 (1878, opinion by Mr. Justice Bradley).

We do not challenge the immunity of the United States from suit without its consent. It stands on the same high ground as, but no higher than, the immunity conferred upon states of the United States by the Eleventh Amendment, adopted in 1798 and providing as follows:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State or by Citizens or Subjects of any Foreign State."

It was said in *Jacob Hoffmann Brewing Co. v. McElligott,* 259 Fed. 525, 527 (C. C. A., 2d Circ., 1919, opinion by Judge Ward):

> "There is no difference between the states and the United States in respect to this immunity from suit. It is an attribute of every sovereign, recognized by all sovereigns."

It is true that an independent suit cannot be maintained against the United States without its consent, but it is equally true that where the United States voluntarily submits to the jurisdiction of judicial tribunals by asking relief, it subjects itself to equitable proceedings of a summary character with reference thereto.

The authorities are decisive against a claim of immunity by a sovereign after it has voluntarily become a litigant in the very tribunal in which it asserts the immunity. For example, in *Gunter* (*Attorney General of South Carolina*) *v. Atlantic Coast Line R. R. Co., supra,* 200 U. S. 273, 292, this Court said of the attempt to

assert immunity from suit on behalf of the State of South Carolina (which, under the Eleventh Amendment, stands in exactly the same position as the United States):

> "Both the statute and the amendment* relate to the power of courts of the United States to deal, against the will and consent of a State, with controversies between it and individuals. None of the prohibitions, therefore, of the Amendment or of the statute relate to the power of a federal court to administer relief in causes where jurisdiction as to a State and its officers has been acquired as a result of the voluntary action of the State in submitting its rights to judicial determination. To confound the two classes of cases is but to overlook the distinction which exists between the power of a court to deal with a subject over which it has jurisdiction and its want of authority to entertain a controversy as to which jurisdiction is not possessed."

Port Royal & Augusta Ry. Co. v. South Carolina, 60 Fed. 552 (C. C. D. S. C., 1894, opinion by Judge Simonton) was similar. There the State of South Carolina brought a bill against a railroad and the bill was removed to the United States Circuit Court and a cross bill filed by the railroad against the sovereign state of South Carolina. "Subpoenas were issued, and the State of South Carolina was served by substituted service on the attorney general, by whom the original bill was filed. A motion [was] made to set aside the service of the subpoena, and dismiss the cross bill, upon the ground that it [would] not lie against a sov-

*These references are to the Eleventh Amendment and Section 720 of the Revised Statutes (28 U. S. C. A. § 379).

ereign state" (p. 552). The motion was overruled, the court holding (p. 553):

> "A sovereign state cannot be forced into court against her consent; but a cross bill presupposes that the plaintiff is already in court rightfully, and when the state comes into court of her own accord, and invokes its aid, **'she is, of course, bound by all the rules established for the administration of justice between individuals.'** State v. Pacific Guano Co., 22 S. C. 74. . . . The only question now before us is, can the state be called to make defense to a cross bill filed in a suit instituted by herself? As by her own volition she is already in court, and as the cross bill is **but a part** of the defense to her suit, ancillary to and dependent upon it, we hold that **she has by her own act subjected herself to all the rules established for the administration of justice between individuals, and must make her defense to this cross bill."** (Emphasis added.)

Other rulings to the same effect are *United States v. American Surety Co.,* 110 Fed. 913 (C. C. D. Me. 1901, opinion by Judge Putnam), and *Fish v. Morgenthau,* 10 F. Supp. 613 (D. N. H., 1935, opinion by Judge Morris).

The principle to which we have referred as to the effect of participation by the United States in a suit in court is nowhere controverted so far as we have been able to learn. Any cases heretofore cited by Government counsel to the effect that the United States cannot be sued without its consent have been found to be (1) independent suits, (2) ancillary action in litigation to which the Government had not theretofore been a party or (3) suits extending the scope of the litigation beyond the subject matter brought into court by the United States.

IV.

Conclusion.

We respectfully submit that the following propositions are well settled, upon principle and authority:

(1) When the United States files a bill in equity claiming that a corporation has violated the Sherman Act and upon that bill obtains a decree, regulating the corporation's future activities on the premise that the corporation is a monopoly, any further equitable relief, involving the same subject matter, can only be obtained by supplementary application in the very suit in which the decree has already been entered.

(2) The court in which the decree has been entered has full and complete authority to modify the decree in every way that may be required and to grant any further appropriate relief. It has this power "by force of principles inherent in the jurisdiction of the chancery," whether or not the decree originally entered specifically retains jurisdiction of the suit.

(3) Any number of additional parties can be brought into the original suit upon the supplementary proceedings, Section 5 of the Sherman Act expressly providing that where "the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not . . ." Thus every additional defendant named in the New York suit can be brought into the Pennsylvania Court by the United States and service may be made in any district of the United States for that purpose.

(4) When the United States by its law officers files a bill in equity and obtains an injunction operating

for the future, those law officers and their successors in their official capacities are in that court and subject to its complete control so long as the injunction operates. Unquestionably they are subject to the injunction of the Pennsylvania Court without being made parties to the suit.

(5) When the law officers of the United States are ignoring the jurisdiction of the court whose jurisdiction their official predecessors invoked, clearly the Sherman Act authorizes the court to join them as parties if "the ends of justice require" and clearly the court may enjoin them from defeating its jurisdiction.

The New York litigation marks a radical departure. Prior thereto it had been the practice of the Department of Justice to relitigate anti-trust questions settled by existing decrees by returning to the court which had entered the original decree and there securing an adjudication or amendment of that decree in the light of the current facts: *United States v. International Harvester Co., supra,* 274 U. S. 693; *United States v. Standard Oil Co. of New Jersey, supra,* 47 F. (2d) 288.

Now all is changed. The court of first jurisdiction is ignored and the reliance of the private litigant upon the terms of the first decree is attempted to be set at naught by a new petition in which it is proposed to proceed as though there had been no prior adjudication and as though there were no outstanding injunction. The ruling of this Court that a decree is only to be changed upon a showing of changed conditions (*United States v. Swift & Co., supra,* 286 U. S. 106, 114-115) is to be set at naught by going to a court where there is no existing decree.

It is not fair to either the Pennsylvania or the New York Court to have the identical question litigated in both forums. It is the kind of thing which the Government condemns when its ox is gored. Witness, for example, the printed brief on behalf of the Tennessee Valley Authority at pp. 30-31 in the case of *Georgia Power Co. v. Tennessee Valley Authority* in the United States Circuit Court of Appeals for the Fifth Circuit (89 F. (2d) 218), where attorneys for the United States, on February 27, 1937, advised the court:

> "'It is gross oppression to vex another with a double suit for the same cause of action' (Putnam v. Clark, 34 N. J. Eq. 532)."
>
> "'It is *prima facie* vexatious to bring two actions where one will do' (The Christiansborg, L. R. (1885), 10 Prob. Div. 146)."
>
> "A party is bound 'by a regard for propriety, if no other law, not to seek to wrest the litigation from the court in which it had been commenced' (Conover v. The Mayor &c of New York, supra, at 525)".

It was not the Aluminum Company's decision that brought the Pennsylvania suit into being. It was not the Aluminum Company's choice that it be sued again in New York for the same offenses regulated by the 1912 decree. It was not the Aluminum Company that brought about the creation of a statutory Expediting Court to pass upon all future aspects of the Pennsylvania suit. All of these decisions we pass without comment, for they are beyond our control and are decisions the authority and responsibility for which are clearly vested in the Department of Justice.

We do not seek to choose the forum in which the legality of the Aluminum Company's conduct shall be

decided. We simply contend that, one forum having been chosen and the issue still being before that tribunal, the Government may not be permitted a second forum in which to try the same issue. This we do earnestly protest, to the end that if the issues which were made the subject of the Pennsylvania decree are to be relitigated, they should be tried before the Government invoked statutory Expediting District Court of the United States for the Western District of Pennsylvania. Then, when all is said and done and the Aluminum Company is either ordered dissolved, or enjoined, or both, or neither, there will be outstanding not two decrees, but one, so that the arbiter of the company's destiny may not be two courts of independent jurisdiction but one court, charged with the sole responsibility of sitting in judgment upon the future of this company.

Respectfully submitted,

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APPENDIX.

A.

Sections 4 and 5 of the Sherman Anti-Trust Act of July 2, 1890, c. 647, §§ 4, 5, 26 Stat. 209-210 (15 U. S. C. A. §§ 4, 5).

§ 4. "The several circuit courts [district courts] of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

§ 5. "Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof." (Matter in brackets comprises amendment supplied by the Judicial Code, Act of March 3, 1911, c. 231, § 291, 36 Stat. 1167.)

B

Federal Equity Rule 37.

Parties Generally—Intervention.

". . . Any person may at any time be made a party if his presence is necessary or proper to a complete determination of the cause. Persons having a united interest must be joined on the same side as plaintiffs or defendants, but when any one refuses to join, he may for such reason be made a defendant. . . ."

C

The Expediting Act of February 11, 1903, c. 544, 32 Stat. 823, as amended by the Act of June 25, 1910, c. 428, 36 Stat. 854 (15 U. S. C. A. §§ 28-29).

"Be It Enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That in any suit in equity pending or hereafter brought in any circuit court [district court] of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety, 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day,

before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select; or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges sitting in such case shall be equally divided in opinion as to the decision or disposition of said cause, or in the event that a majority of said judges shall be unable to agree upon the judgment, order, or decree finally disposing of said case in said court which should be entered in said cause, then they shall immediately certify that fact to the Chief Justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the Chief Justice shall be immediately transmitted to the clerk of the circuit court [district court] in which said cause is pending, and shall be entered upon the minutes of said court. Thereupon said cause shall at once be set down for reargument and the parties thereto notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof. The provisions of this section shall apply to all causes and proceedings in all courts now pending, or which may hereafter be brought.

2. That in every suit in equity pending or hereafter brought in any circuit court [district court] of the United States under any of said Acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the

circuit court [district court] will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: *Provided,* That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this Act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law." (Matter in brackets comprises amendment supplied by the Judicial Code, Act of March 3, 1911, c. 231, § 291, 36 Stat. 1167.)

D

Excerpts from the Decree of the District Court of the United States for the Western District of Pennsylvania entered June 7, 1912, in the case at bar.

"1. That sections 2, 4, and 5 of the agreement entered into as of date September 25, 1908, between the Societe Anonyme pour l'Industrie de l'Aluminum of Neuhausen and the Northern Aluminum Company (Ltd.), acting on behalf of the defendant corporation, as follows, to wit:

(Certain portions of the contract are thereupon paraphrased.)

be and the same are hereby declared null and void, and that the defendant Aluminum Company of America, and all its agents and representatives in whatever capacity, are hereby perpetually enjoined from directly or indirectly requiring the parties to said contract to abide by its terms, and defendant is further enjoined from either directly or indirectly entering into, through said Northern Aluminum Company, or any other person or corporation, and from making or aiding in making any agreement containing provisions of the nature of those

hereinbefore set out, in so far as they relate to the sale of aluminum in the United States, or its importation into or exportation from the United States, or any contract or agreement, either verbal or written, the purpose and effect of which would be to restrain the importation into the United States, from any part of the world, of aluminum, or alumina, or bauxite, or any other material from which aluminum can be manufactured, or to fix or illegally affect the prices of such aluminum, alumina, bauxite, or other material, when imported." (R. 64-65; Emphasis added.)

"6. . . That the defendant and its officers, agents, and representatives be and they are hereby perpetually enjoined from entering into a contract with any other individual, firm, or corporation of a like or similar character to the above-quoted provisions in the contracts between the Aluminum Company of America and the General Chemical Company, between said Aluminum Company and the Norton Company, between said Aluminum Company and the Pennsylvania Salt Manufacturing Company, and between said Aluminum Company and Kruttschnitt and Coleman, or either of them, and from entering into or participating in any combination or agreement the purpose or effect of which is to restrict or control the output or the prices of aluminum or any material from which aluminum is directly or indirectly manufactured, and from making any contract* or agree-

* It should be noticed that paragraph 6 of the decree enjoins any "combination", "agreement" or "contract" which has the purpose or effect prohibited by this portion of the decree. The quoted words are the equivalent of the words "contract, combination * * * or conspiracy" in Section 1 of the Sherman Act (a conspiracy involving, by necessary definition, a *combination* of two or more persons: *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271—C. C. A., 6th Circ., 1898, opinion by Judge Taft), which have been described as an "all-embracing enumeration to make sure that no form of contract or combination by which an

ment for the purpose of or the effect of which would be to restrain commerce in bauxite, alumina, or aluminum, or to prevent any other person, firm or corporation from or to hinder him or it in obtaining a supply of either bauxite, alumina or aluminum of a good quality in the open market in free and fair and open competition, and from themselves entering into, or compelling or inducing under any pretext, or in any manner whatsoever, the making of any contract between any persons, firms, or corporations engaged in any branch of the business of manufacturing aluminum goods, the purpose or effect of which would be to fix or regulate the prices of any of their raw or manufactured products in sale or resale". (R. 69; emphasis added.)

"7. To prevent all undue discrimination upon the part of defendant and its officers and agents, or upon the part of any firm or corporation in whose business defendant owns or hereafter acquires a financial interest by stock ownership or otherwise, against any competitor of defendant, and thus to prevent the unlawful acquisition by defendant of a monopoly in any branch of manufacturing from crude or semifinished aluminum, defendant and its officers, agents, and representatives, are hereby perpetually enjoined from committing the following acts, to wit:

"(*a*) Combining either by stock ownership or otherwise with any one or more manufacturers for the

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undue restraint of interstate or foreign commerce was brought about could save such restraint from condemnation." (*Standard Oil Co. v. United States*, 221 U. S. 1, 59-60—1911, opinion by Mr. Chief Justice White). It was said of the Sherman Act words in *Northern Securities Co. v. United States*, 193 U. S. 197, 331 (1904, opinion by Mr. Justice Harlan), that they applied to "every contract, combination or conspiracy in whatever form, of whatever nature, and whoever may be parties to it."

purpose or with the effect of controlling or restraining the output of any product manufactured from aluminum, or fixing or controlling the price thereof.

"(*b*) Delaying shipments of material to any competitor without reasonable notice and cause, or refusing to ship or ceasing to continue shipments of crude or semifinished aluminum to a competitor on contracts or orders placed, and particularly on partially filled orders, without any reasonable cause and without giving notice of same, or purposely delaying bills of lading on material shipped to any competitor, or in any other manner making it impossible or difficult for such competitor promptly to obtain the material upon its arrival, or from furnishing known defective material.

"(*c*) Charging higher prices for crude or semi-finished aluminum from any competitor than are charged at the same time under like or similar conditions from any of the companies in which defendant is financially interested, or charging or demanding higher prices for any kind of crude or semi-finished aluminum from any competitor for the purpose or which under like or similar conditions will have the effect of discriminating against such manufacturers in bidding on proposals or contracts to the advantage of said defendant or any company in which it is financially interested.

"(*d*) Refusing to sell crude or semifinished aluminum to prospective competitors in any branch of the manufacturing aluminum goods industry on like terms and conditions of sale, under like or similar circumstances, as defendant sells such crude or semifinished aluminum to any firm or corporation engaged in similar business in which defendant is financially interested.

"(*e*) Requiring, as a condition precedent to selling crude or semifinished aluminum to a competitor, that

such competitor divulge to defendant the terms which such competitor proposes to make in order to secure the work in which the desired aluminum is to be used, and from imparting to any one the purpose or purposes for which said competitor is intending to use said metal.

"(*f*) Requiring or compelling the making of agreements by competitors not to engage in any line of business nor to supply any special order in competition with defendant or with any company in which it is financially interested as a condition precedent to the procurement of aluminum metal.

"(*g*) Representing or intimating to competitors that unless they dealt with defendant or with companies in which defendant has a financial interest for their supply of metal such competitor will not be able to obtain a sufficient supply of metal or obtain it at a price that will permit them to engage in competition with defendant or with companies in which defendant is financially interested; or in like manner representing or intimating to consumers of aluminum in any stage of manufacture that unless they deal with defendant or with a company in which it is financially interested, their supply of material or manufactured products will be cut off for that reason.

"(*h*) Taking the position with persons, firms, or corporations engaged in the manufacture of any kind of aluminum goods that if they attempt to enlarge or increase any of their industries or engage in enterprises that are or will be competitive with defendant or with the business of any firm or corporation in which defendant is financially interested such persons, firms, or corporations will for that reason be unable to procure their supply of material from defendant or any of the companies in which it is financially interested." (R. 69-71; emphasis added.)

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IN THE

Supreme Court of the United States

NO. 281 OCTOBER TERM, 1937

ALUMINUM COMPANY OF AMERICA,
Appellant,

v.

THE UNITED STATES OF AMERICA.

APPELLANT'S REPLY BRIEF.

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The issues have been narrowed by the omission from the brief of Government counsel of any argument to the effect that they were not properly before the Pennsylvania Court. And apparently the contention is abandoned that the ancillary petition in the Pennsylvania suit is an unauthorized action against the United States.*

There appear in the brief of Government counsel five contentions which we desire to answer as briefly as

* A short footnote at page 41 of the brief of Government counsel states that the immunity of the United States from suit extends to cross bills and ancillary suits, but no attempt is made to apply that assertion to the case at bar. Nor would the two cases there cited sustain such an application. In the first, *Illinois Central R. R. Co. v. Public Utilities Commission*, 245 U. S. 493, 504-505 (1918, opinion by Mr. Justice Van Devanter), the United States had not been a party to the original suit in which the cross bill against it was filed. In the second, *De Groot v. United States*, 5 Wall. 419, 431 (1867, opinion by Mr. Justice Miller), the holding was simply that a set-off pleaded by a defendant in an action instituted by the United States could not be carried to the point of an affirmative judgment against the Government.

may be. They are (1) a forced analysis (brief, pp. 10-25) of the Pennsylvania and New York petitions and a citation of certain authorities upon which Government counsel base the contention that the petitions are not substantially identical; (2) an argument (brief, pp. 25-46, 51-52) that there is no possibility of the entry of conflicting decrees by the Pennsylvania and New York Courts and that there is no harm inherent in concurrent decrees of two courts regulating the same subject matter; (3) an unwarranted classification (brief, pp. 32-46) of the cases which have granted injunctions in aid of the jurisdiction of a first court; (4) an argument (brief, pp. 52-59) that an injunction would defeat the statutory rights of the United States under the Sherman Act; and (5) an argument (brief, pp. 59-64) that the Expediting Court was properly invoked.

I.

THE PENNSYLVANIA AND NEW YORK SUITS ARE SUBSTANTIALLY IDENTICAL IN SUBJECT MATTER AND ISSUES.

Erroneous Assumption. The Expediting Court decided this issue against the Aluminum Company on a fundamentally erroneous assumption of fact concerning the averments in the Pennsylvania petition. That Court was under the impression, stated in its opinion, that:

> "The United States expressly conceded that the monopoly enjoyed by Aluminum Company *at the time of suit* was lawful because of its ownership of unexpired basic patents. . . .
>
> "When we examine the respective petitions, it becomes obvious that whereas the United States in the Pennsylvania suit treated the existence of a monopoly as wholly lawful . . . by the time it brought the New York suit the issue had become

not whether any specific device was lawful but whether the monopoly which existed in 1937 was lawful." (R. 184; italics ours.)

The Expediting Court was in fundamental error on this point. The Pennsylvania petition conceded that the Aluminum Company's monopoly had been lawful until the expiration of its basic patents *in 1909* (R. 28), a position correctly stated by Government counsel in their brief (p. 20). The Pennsylvania petition was not filed *until 1912*. The Government's position in the Pennsylvania petition was the exact opposite of the understanding of the Expediting Court, the Pennsylvania petition not only complaining of alleged illegal devices whereby the alleged monopoly was maintained (R. 17-25), but of the alleged monopoly itself and the power inherent in it to exclude competitors, actual and prospective (R. 25-26, 30), concluding with the statement that the petition was brought (R. 30):

". . . in order that the entire aluminum industry may be open to all who may desire to enter therein, and that competition may arise . . . and the monopoly therein be destroyed, ..."

In the second prayer of the petition the Pennsylvania Court was asked to decree that the defendant (R. 31):

". . . has attempted and is now attempting unlawfully to monopolize, and has unlawfully monopolized, a part of interstate and foreign trade and commerce in aluminum in its various forms, crude, semifinished, or fabricated, including the raw materials necessary in its manufacture, to wit, bauxite and alumina. . . ."

Furthermore, in addition to the drastic restrictions imposed by the consent decree, paragraph 7 thereof recites that said paragraph is drawn (R. 69-70) "to prevent

the unlawful acquisition by defendant of a monopoly in any branch of manufacturing from crude or semifinished aluminum . . .."

In view of the Expediting Court's basically erroneous understanding of the Government's position on monopoly in the Pennsylvania petition, it is submitted, with deference, that its opinion is without weight on this issue.

Analysis of New York petition. Government counsel analyze the New York petition (brief, footnote, pp. 21-22) as containing "three causes of action alleged in the three sections of the petition, each of which terminates with the charge that the facts alleged therein constitute a violation of the Sherman Act." The first cause of action is said to be a charge in paragraph 53 that the Aluminum Company is an illegal monopoly *per se* (brief, footnote, pp. 21-22). The second cause of action, in the words of the brief of Government counsel (p. 17), is said to be "a far-reaching scheme for the restraint of foreign competition", and the third (brief, p. 18) is the charge that "appellant's monopoly has been acquired and maintained by unfair and oppressive tactics."

Government counsel's brief does not deny that the second and third causes of action are confined to charges enjoined by paragraphs 1, 6 and 7 of the Pennsylvania decree (R. 64-65, 69-71). It is only said that many of the restraints and oppressions have originated since 1912 (brief, pp. 17-18), a distinction fully answered in appellant's brief (pp. 26-28).

The remaining cause of action which Government counsel contend is stated in its New York petition is a charge of monopoly *per se*. We do not believe that this issue is raised by the New York petition for the reasons stated at pages 15-17 of appellant's brief, but, even if it is

raised, it was as clearly raised in paragraphs XI and XIV (R. 25-26, 28-30) of the Pennsylvania petition. The Government charged in both instances that the Aluminum Company was monopolizing the industry, the percentage of monopolization alleged in the Pennsylvania petition (R. 12-17) and in the New York petition (R. 105-108) not varying substantially. It is alleged at page 16 of Government counsel's brief that the two petitions disclose that the assets of the company have increased substantially and that its percentage of the alumina used in the United States in the manufacture of aluminum has increased from 80% to 100%, and that the Aluminum Company admits that it now produces 100% of the virgin aluminum manufactured in the United States and uses 100% of the bauxite used in the United States for the production of aluminum. The Pennsylvania petition averred (R. 25) that the Aluminum Company then manufactured all of the virgin aluminum produced in this country, from which it follows that the Aluminum Company then used all of the bauxite devoted to that purpose in the United States.

Certainly it is of no legal significance that the alleged percentages of monopolization of certain branches of the business have changed slightly through the years or that new plants have been erected or new subsidiaries incorporated, and yet such trivialities are detailed by Government counsel in their brief (p. 17).

One need only note that the Pennsylvania decree closes with the statement that it has been "entered upon the assumption that the defendant, Aluminum Company of America, has a substantial monopoly of the production and sale of aluminum in the United States" (R. 72) to realize that the monopoly charge in the New York suit is a repetition of an old allegation. The Expediting

Court found in this charge "only such similarity as may exist between an infant and a full grown man" (R. 183). It is submitted that if we accept this statement, as does Government counsel at page 17 of their brief, there is established complete legal identity. Further, the Aluminum Company was a lusty infant as early as 1911 because in the Pennsylvania petition it is said that in that year the company produced 44,000,000 pounds of aluminum (R. 11) and that its assets were $27,000,000 (R. 27).

Apparently realizing that the Pennsylvania Court has assumed, by its decree, a regulatory jurisdiction of the matters complained of in the New York petition, Government counsel fall back upon the argument (brief, footnote, p. 13 and p. 19) that the Pennsylvania decree is, by resort to the allegations of the Pennsylvania petition, to be construed in some undefined way as something narrower than it was meant to be or than its language imports. Suffice it to say that the Pennsylvania decree was entered by *consent,* is unambiguous in its terms, and is quite responsive to the Pennsylvania petition. Pleadings may clear up an ambiguity in a decree but they should never be used to create an ambiguity in an otherwise unambiguous decree. See *St. Louis, K. C. & C. R. Co. v. Wabash Ry. Co.,* 152 Fed. 849, 852 (C. C. A., 8th Circ., 1907, opinion by Judge Sanborn). Furthermore, a consent decree partakes of the character of a voluntary agreement between the parties* and may well be valid although it goes beyond the pleadings. 2 *Freeman on Judgments,* Section 664. The Pennsylvania decree, while comprehensive, is not so broad that practical

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* *The Ansaldo San Giorgio I v. Rheinstrom Bros. Co.,* 73 F. (2d) 40, 41 (C. C. A., 2d Circ., 1934, opinion by Judge Swan), affirmed 294 U. S. 494 (1935, opinion by Mr. Justice Roberts); *Wilson v. Haber Bros.,* 275 Fed. 346, 347 (C. C. A., 2d Circ., 1921, opinion by Judge Hough).

understanding or compliance is impossible. It is specific enough that every charge made in the New York petition can be classified under a specific prohibition of the Pennsylvania decree.

Concededly (Government counsel's brief, p. 15), the "subject matter of the New York petition . . . is necessarily related to the subject matter of the 1912 suit. Concededly (Counsel's brief, pp. 24-25), the adjudication of the Pennsylvania Court concerning the five contracts is *res adjudicata*. But the concessions are inadequate. The Pennsylvania decree dealt not only with the five contracts but with many alleged existing practices. It also contained a comprehensive regulation of future practices. The Pennsylvania decree was plainly drawn to bring about a perpetual regulation of the Aluminum Company so that, in the words of the Pennsylvania petition (R. 30) "the entire aluminum industry may be open to all who may desire to enter therein, and that competition may arise . . . and the monopoly therein be destroyed. . . ."

The close identity of the Pennsylvania and New York suits is again shown by Government counsel's own comparison of the Pennsylvania decree and the decree sought in the New York suit (brief, p. 52):

> "Both are intended to compel obedience to the Sherman Act, and the affirmative injunctive provisions sought are harmonious. The only difference lies in the fact that the New York petition seeks more drastic relief."

The cases cited at pages 18-19 of the brief of Government counsel in support of their contention that facts occurring subsequent to 1912 defeat the continuing jurisdiction of the Pennsylvania Court are plainly inapplicable. Neither case [*Memphis City Bank v. Tennessee*, 161 U. S. 186 (1896, opinion by Mr. Justice Peckham), or

Watson v. Jones, 13 Wall. 679 (1872, opinion by Mr. Justice Miller)] involved a continuing regulation of future conduct, such as the Pennsylvania decree provided. Both cases turned on the circumstance that the facts which had intervened between the first and second suit raised a *different* issue than was litigated in the first suit. In the *Memphis City Bank* case the first suit adjudicated that stockholders of an *insurance* company were exempt from certain taxes. Between the first and second suits the insurance company had been changed to a *bank,* a circumstance which defeated the binding effect of the first adjudication, not because the facts were new but because they presented a fundamentally different question. In *Watson v. Jones* the first suit was concerned with whether certain individuals had been elected elders of the Walnut Street Presbyterian Church of Louisville, Kentucky. Subsequent to the first suit, the issues incident to the Civil War divided the church into two groups, and the second suit dealt with the question as to which of two bodies should be recognized as the Walnut Street Presbyterian Church. As the court said of the second suit, 13 Wall. 679 at p. 717:

> "The issue here is no longer a mere question of eldership, but it is a separation of the original church members and officers into two distinct bodies, with distinct members and officers, each claiming to be the true Walnut Street Presbyterian Church, and denying the right of the other to any such claim."

Here, again, it was not that the facts were new, but that they raised different issues, that was significant.

Additional relief immaterial. The contention is next advanced by Government counsel (brief, pp. 22-25) that the relief sought in the two suits is different because the Government sought to *regulate* the Aluminum Company as a monopoly in the Pennsylvania suit, while in the New

York suit it seeks to *dissolve* it (in the sense of breaking it into smaller units) as a monopoly. It is submitted that this is a distinction without a difference. Both suits are equity actions under the Sherman Act. Both complain that the Aluminum Company has monopolized and restrained commerce. Both charge that the Aluminum Company has the power to restrain actual and potential competition. The Government sought a regulatory injunction in both suits. It would have been germane to both suits to seek a division of the Aluminum Company into smaller units. This is merely regulation somewhat more stringent in degree than a supervisory injunction. If there is to be any effective control of the Government's assertion of the right first to enjoin, then re-enjoin and then dissolve the Aluminum Company, it must necessarily be exercised by one court, not several.

In the concluding paragraph of the argument of Government counsel that the relief sought in the two suits is different, they concede (brief, p. 24) that:

> "It is not disputed that *res judicata* may apply to issues arising in a subsequent suit where different relief is sought."

It is submitted that this necessary concession to long-established principles completely nullifies their contention that the severer form of regulation sought in the New York suit is a reason for denying an injunction.

Additional parties immaterial. Government counsel also contend (brief, pp. 14-15) that an injunction should not issue to restrain them from proceeding in the New York suit against the Aluminum Company, its officers, directors and 100% subsidiaries, because there are 23 additional parties defendant to the New York suit. Government counsel concede at the outset, as they must, that (brief, p. 14):

> ". . . issues adjudicated between two parties in one suit are *res judicata* as to them in a subsequent suit where there are additional parties. This elementary proposition is not disputed. . . . ."

This "elementary proposition" should be as faithfully observed where a continuing regulatory injunction of the first court is sought to be avoided because additional parties defendant have been added in a suit in a second court seeking the same as well as more drastic regulatory relief. Furthermore, a reading of the New York petition or the repeated summaries of its purposes in the brief of Government counsel (pp. 3-4, 16, 17, 18, 21-22, 23) makes it obvious that the New York petition is directed at the Aluminum Company of America, its officers, directors, and 100% subsidiaries. The 23 remaining parties are defendants only because of alleged relationships with Aluminum Company. No relief is sought against any of them except to regulate or terminate their alleged relationships with the Aluminum Company. Their addition as parties defendant was perhaps thought to facilitate their presence at the trial of the New York suit, but it has no other discernible advantage.

Cases cited. The cases cited by Government counsel (brief, pp. 10-13) to establish the lack of identity and subject matter between the Pennsylvania and New York suits are so unlike the situation here presented as to suggest, rather, a complete absence of authority in support of its contention. ***In none of the cases was there involved a continuing regulation.*** No cited case, if language be considered in context, remotely resembles the legal problem here presented.

Pacific Live Stock Co. v. Oregon Water Board, 241 U. S. 440, (1916, opinion by Mr. Justice Van Devanter),

cited at page 11 of Government counsel's brief, was totally unlike the case at bar.. A state Water Board instituted statutory proceedings in which all claimants of riparian rights were compelled to prove their claims. A claimant, who had been a plaintiff in an earlier *private* litigation over certain of these water rights, unsuccessfully sought an injunction against the hearing by the Water Board, on the basis of the prior adjudication. The parties in interest were different, the purposes of the adjudication quite dissimilar and one litigation was private in character and the other a quasi-public proceeding. Of course no injunction was issued.

Buck v. Colbath, 3 Wall. 334 (1866, opinion by Mr. Justice Miller), involved a plea in bar in a second suit and is apparently cited (Counsel's brief, pp. 12-13) for the concluding sentence in the quotation that the second court "must have regard to the nature of the remedies, the character of the relief sought, and the identity of the parties in the different suits." The limited application of the above quoted sentence is made plain by the language of this Court *immediately* following the sentence, to-wit (*id.* at p. 345):

> "*For example,* a party having notes secured by a mortgage on real estate, may, unless restrained by statute, sue in a court of chancery to foreclose his mortgage, and in a court of law to recover a judgment on his notes, and in another court of law in an action of ejectment to get possession of the land. Here in all the suits the only question at issue may be the existence of the debt mentioned in the notes and mortgage; but as the relief sought is different, and the mode of proceeding is different, the jurisdiction of neither court is affected by the proceeding in the other. . . . The true effect of the rule in these cases is, that the court of chancery

cannot render a judgment for the debt, nor judgment of ejectment, but can only proceed in its own mode, to foreclose the equity of redemption by sale or otherwise. The first court of law cannot foreclose or give a judgment of ejectment, but can render a judgment for the payment of the debt; and the third court can give the relief by ejectment, but neither of the others. And the judgment of each court in the matter properly before it is binding and conclusive on all the other courts. This is the illustration of the rule where the parties are the same in all three of the courts.

"The limitation of the rule must be much stronger, and must be applicable under many more varying circumstances, when persons not parties to the first proceeding are prosecuting their own separate interests in other courts.

"The case before us is an apt illustration of these remarks." (Italics ours.)

It is submitted that on the equities of the case at bar and the authorities cited in appellant's brief, the preliminary injunction (R. 141) should have been followed by a final injunction in order to protect the clearly asserted jurisdiction of the Pennsylvania Court over the subject matter of the Pennsylvania suit.

II.

The Dangers Inherent in Concurrent Decrees.

Government counsel attempt to demonstrate (at pp. 27-31 of their brief) that it is not possible for the Aluminum Company to be subjected to the danger of conflicting decrees by the Pennsylvania and New York Courts and (at pp. 51-52 of its brief) that the possibility of two harmonious decrees affords no ground for enjoining the New York suit against the Aluminum Company, its officers, directors and 100% subsidiaries.

Let us assume for the sake of argument that the New York Court enters a decree which harmonizes with the Pennsylvania decree so perfectly that it is an exact duplicate of it. It would seem to be self-evident that two such concurrent or coincident decrees are fundamentally objectionable. By hypothesis, each court would retain regulatory jurisdiction over the future conduct of the Aluminum Company. Any petition by either the United States or the Aluminum Company for an interpretation or a modification or an enlargement of these twin decrees would have to be presented in both courts. Any alleged violation of the twin decrees would presumably be litigated in both courts. It is not only within the realm of reason but quite likely that the courts would on occasion reach different conclusions. If so, conformity with one decree would lead to disobedience of the other. Under the jurisdiction retained (by hypothesis) by the New York Court, the Aluminum Company might petition under the decree for the right to purchase securities of other companies, much as it did in the Pennsylvania suit in 1922. If such a petition were favorably acted upon, it would then be necessary for the Aluminum Company to present a similar petition to the Penn-

sylvania Court, which Court could grant or refuse permission as it saw fit.

Next, let us assume that the New York Court enters a decree enjoining some but not all of the practices enjoined by the Pennsylvania decree. In that situation the Aluminum Company might conduct itself in conformity with the New York decree, but in so doing violate the Pennsylvania decree. Or does the Government contend that the New York decree would supersede the Pennsylvania decree, and, if so, would not the New York decree amount to a collateral attack on the Pennsylvania decree?

As a third possibility, let us assume that the New York Court decrees greater regulation than is contained in the Pennsylvania decree and directs the division of the Aluminum Company into competing companies. Would the Pennsylvania decree remain in effect or would it be supplanted by the New York decree? If the Aluminum Company thereafter sought the approval of the Pennsylvania Court in the purchase of securities, as it did in 1922 (R. 73), and the Pennsylvania Court gave that approval, how could the decree be carried out without violating the New York decree?

Finally, let it be assumed that the Government obtains a complete victory in New York. Paragraphs 61 and 62 of the New York petition (R. 111-112) charge that the acquisition of the foreign securities approved by the Pennsylvania Court by supplemental decree in 1922 (R. 77) was illegal. A decree to this effect would either be in conflict with the Pennsylvania decree or a complete nullification of it.

It seems to us inescapable that regardless of whether the New York decree imposes greater or less

regulation, or the same as is contained in the Pennsylvania decree, the result is either the strong possibility of conflict during the indefinitely projected administration of those decrees or the nullification of the Pennsylvania decree.

It is argued at pages 29-31 of the brief of Government counsel that the Aluminum Company has no rights under the Pennsylvania decree and that as a consequence the New York Court can enter any decree it chooses without giving the Aluminum Company the right to obtain an injunction. Certainly the Aluminum Company thought it obtained the right to make a large investment in 1922 (Supplemental Pennsylvania decree, R. 77). And how can it be said that the Pennsylvania decree operates only in the Government's favor when it is the clear implication of that decree that the company is to have the conditional right to do business within the limits of the decree, subject always to the right of the Pennsylvania Court to change those limitations? The last portion of the decree (R. 72) sets forth in five paragraphs methods of doing business which are affirmatively permitted under the decree. The decree further provides in substance (R. 72) that so long as the Aluminum Company has a substantial monopoly of the production and sale of aluminum in the United States, it may do business only under the terms of the decree, subject to the right of the company to petition for modification not oftener than once in three years. Certainly this was intended to confer upon the company the right to do business, subject to the regulation of the Pennsylvania Court.

The existence of a residuum of rights in a defeated litigant is aptly illustrated by *Swift v. Black Panther Oil Co.*, 244 Fed. 20, 27 (C. C. A., 8th Circ., 1917, opinion by Judge Sanborn) where an injunction was granted

to protect such rights from re-litigation in a second court. A Federal Court had entered a consent decree in a land controversy requiring the lessee, Panther Co., to pay one-fourth of the proceeds from oil and gas production to a federal receiver for the benefit of other parties in interest. The Federal Court later enjoined a state suit which threatened the three-fourths interest remaining in the Panther Co., although it was claimed in opposition that the second suit did not "deprive the federal court of the possession of the land" or prevent its receipt of the one-fourth interest in the proceeds. The injunction was granted in order to protect the rights remaining in the Panther Co. under the consent decree and subsequent agreement with the receiver.

Even if it were true that the Aluminum Company had no rights under the Pennsylvania decree, the mischief inherent in two concurrent or coincident regulatory decrees of independent courts, regardless of whether those decrees conflict in terms, is apparent from the foregoing illustrations (pages 13-14, *supra*). Consequently the Pennsylvania and New York Courts, as well as the Aluminum Company, are entitled to protection against such a situation.

Government counsel argue (brief, p. 30) that the Pennsylvania consent decree is neither a contract nor binding upon the United States. Admittedly the decree is not a contract in the sense that it cannot be modified by the Pennsylvania Court without the further consent of both parties: *United States v. Swift & Co.*, 286 U. S. 106, 115 (1932, opinion by Mr. Justice Cardozo). Subject to this single qualification, it is submitted that this decree, entered pursuant to agreement, is one "which has become binding upon all parties, and upon which the

International Company [here, the Aluminum Company] has, in the exercise of good faith, been entitled to rely": *United States v. International Harvester Co.*, 274 U. S. 693, 703 (1926, opinion by Mr. Justice Sanford).

It is contended at page 32 of the brief of Government counsel that the Aluminum Company has virtually conceded that the New York suit is not designed to reverse the Pennsylvania decree, because the company did not assign as error the 7th finding of fact of the Expediting Court (R. 176). However, this same issue is raised by the assignments, as error, of the Court's 8th and a portion of its 9th findings of fact (R. 192). Further assignments on this issue would have involved needless multiplicity.

It is urged by Government counsel (brief, pp. 49-51) that the Aluminum Company had an adequate remedy by presenting the Pennsylvania decree as a plea in bar in the New York suit. This contention overlooks the fact that the Pennsylvania Court has the duty to protect its jurisdiction. It overlooks the further fact that the Aluminum Company would not have the *right* to have such a plea in bar heard in advance of a trial of the New York suit on its merits, such plea being determinable in advance of trial only "in the discretion of the court": Equity Rule 29. Further, courts have repeatedly granted injunctions restraining litigants from bringing suit in another jurisdiction on the sole ground that the first suit was *res adjudicata*. *Root v. Woolworth*, 150 U. S. 401, 411-412 (1893, opinion by Mr. Justice Jackson); *Wilson v. Alexander*, 276 Fed. 875 (C. C. A., 5th Circ., 1921, opinion by Judge King); *Trees v. Glenn*, 319 Pa. 487, 181 Atl. 447 (1935, opinion by Mr. Justice Schaffer)*. Furthermore, the right of the Alu-

* This case is inadvertently cited in appellant's brief as 319 Pa. 485.

minum Company to an injunction is broader than the doctrine of *res adjudicata* as shown by *Kessler v. Eldred,* 206 U. S. 285, 288-289 (1907, opinion of Mr. Justice Moody), and is to that extent greater than any right that it could plead in bar in the New York suit. The Aluminum Company had the right to proceed in the court of original jurisdiction and cannot be compelled to submit its rights to the New York court.

Government counsel raise a fictitious issue in their contention (brief, pp. 46-49) that the Aluminum Company will suffer no irreparable injury as a result of the maintenance of the New York suit, either because of the inconvenience to it of defending its life at a distance from its books, records and principal office or because of the necessity of employing New York counsel. Testimony to this effect was offered simply to demonstrate the extent of the inconvenience inflicted upon the Aluminum Company by the maintenance of the New York suit. We do not take the position that it constitutes irreparable injury. But it is a factor which the Court is entitled to consider. However, it did not constitute the irreparable damage of which the Aluminum Company complains. That arises from the threat of concurrent regulatory decrees.

III.

The Attempted Classification of the Injunction Cases Is Unsound.

Government counsel contend (brief, pp. 32-46) that all cases wherein parties have been enjoined from proceeding in a second suit fall into three categories, namely (brief, pp. 32-33), (1) "Where the first court has actual or potential jurisdiction over a *res,* such as a bankrupt estate and the second suit would interfere with the exclusive jurisdiction of the first court to ad-

minister the *res*"; (2) "Where the *defeated** litigant in the first suit institutes a proceeding in a second court to relitigate the issue and deprive the successful litigant of the fruits of his victory"; (3) "Where one of the litigants in the first suit *before final adjudication** institutes additional suits on the identical subject matter for the purpose of harassing and vexing his adversary by relitigating issues awaiting final determination in the first suit." It is then contended that the case at bar falls into none of these categories. The reason it does not is because the categories were designedly narrowed to exclude this case, as the italicized (and gratuitous) limitations in the second and third categories show.

This analysis reflects the ingenuity of Government counsel rather than the ruling of any court. There is no such classification of the authorities to be found in any case or textbook. No case or authority states that the right to an injunction is limited to these three situations. The cases (as a reading of any of them will show) are rested on the much broader premise that whenever a court, proceeding *in personam* or *in rem*, has taken jurisdiction of a particular subject matter or issue, it is the right and duty of that court to protect that jurisdiction, and the litigants before it, by enjoining proceedings in a second jurisdiction on substantially identical subject matter and issues.

Let us look at the first asserted category (*supra*, p. 18). Obviously, the supervisory nature of the jurisdiction exercised by the Pennsylvania Court over the ever-changing affairs of the Aluminum Company bears a close analogy to the jurisdiction of a bankruptcy court over the property of a bankrupt or over a

* Italics ours.

corporate reorganization under the Bankruptcy Act. It is submitted that the Pennsylvania Court, by its assumption of a perpetual regulatory jurisdiction over the Aluminum Company, has assumed jurisdiction over the subject matter and issues presented in the New York petition and has assumed jurisdiction of a *res* or its equivalent far more definitely and realistically than had the bankruptcy court in *Steelman, Trustee v. All Continent Corp.*, 301 U. S. 278 (1937, opinion by Mr. Justice Cardozo), or in *Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co.*, 294 U. S. 648 (1935, opinion by Mr. Justice Sutherland), both of which cases resulted in injunctions protecting the jurisdiction of the first court. Indeed, this Court specifically declined to put its ruling in the *Steelman* case on the ground that a *res* was involved, it being stated of the trustee (301 U. S. 278 at p. 291):

> "He is not seeking an injunction to vindicate his exclusive control over a *res* in his possession, or in the possession, actual or constructive, of the court that appointed him. . . . . What he seeks is an injunction directed to a suitor, and not to any court, upon the ground that the suitor is misusing a jurisdiction which by hypothesis exists, and converting it by such misuse into an instrument of wrong."

Nor did the *Continental-Illinois Bank* case turn upon the fact that the first court was protecting its possession of a *res*. This Court pointed out (294 U. S. 648 at p. 676) that the case was a proceeding under Section 77 of the Bankruptcy Act involving not the liquidation of corporate property but merely a reorganization of corporate structure. The injunction was sustained (*id.* at pp. 675-676) on grounds in no way confined to the protection of a *res*.

Government counsel emphasize (brief, pp. 26, 36-37) *Kline v. Burke Construction Co.*, 260 U. S. 226 (1922, opinion by Mr. Justice Sutherland), as though it contained some important qualification on the right to enjoin proceedings in a second court. Government counsel's statement of the case (brief, p. 26) is a sufficient statement of the reason why no injunction was granted. The Burke Construction Company instituted suit for a *money judgment* for breach of a street-paving contract. The defendant thereafter brought suit against the plaintiff and the sureties on its bond upon the same contract in another court, it also seeking a money judgment. The plaintiff in the first suit sought to enjoin the prosecution of the second suit and failed for the obvious reason that there was nothing involved in either suit but a judgment for money. Neither judgment could interfere with the other.

Government counsel's second category (*supra*, p. 19), if stated as broadly as the cases require, should include the right of *any* litigant, not merely the victorious litigant, to prevent relitigation in a second forum of the issues litigated in the first suit. So stated, the Aluminum Company has the right to the protection of an injunction against the relitigation in the New York suit of the issues adjudicated by the Pennsylvania decree. Surely it needs no demonstration that a defeated litigant is entitled to protection from relitigation at the hands of a victorious litigant. The category was obviously confined by Government counsel to the converse case to avoid confessing error in the case at bar.

Government counsel's third category (*supra*, p. 19) deals with cases in which a party, *prior to a final decree*, institutes vexatious suits to relitigate issues pending in the first suit. The attempt of Government counsel to limit this category so as to exclude the case at bar is

shown by the italicized words. The italicized qualification in this third category that the second suit must be started *prior to the final decree* in the first suit finds no counterpart in the second classification, nor is the spurious qualification in the second group, to the effect that the *defeated* party in the first suit must be the moving party in the second, repeated in the third, showing plainly enough that neither has any validity.

The injunction in *Gunter v. Atlantic Coast Line R. R. Co.*, 200 U. S. 273 (1906, opinion by Mr. Justice White) was granted 25 years *after the final decree* of the first court. It is never the right of a party to relitigate in a second court issues which the first court has adjudicated or over which it has retained jurisdiction, regardless of whether the first litigation has proceeded to a final decree or whether the second suit is vexatious. It is hard to see how the second suit could ever be anything else.

The cases supporting an injunction go well beyond the case at bar. The first court in *Kessler v. Eldred, supra*, 206 U. S. 285, never had before it the defendant in the second suit and yet it issued an injunction. In *Looney v. Eastern Texas R. R. Co.*, 247 U. S. 214 (1918, opinion by Mr. Justice Clarke), and in *Georgia Power Co. v. Tennessee Valley Authority*, 89 F. (2d) 218 (C. C. A., 5th Circ., 1937, opinion by Judge Foster), the first court had done no more than pass upon a preliminary injunction application, denying it in the TVA case,* and yet injunctions were issued against prosecutions of the second suits.

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* It is inadvertently stated at page 44 of appellant's brief that in both cases "the first court had merely denied a temporary injunction without passing in any way upon the propriety of a permanent injunction." The temporary injunction had been granted in the *Looney* case.

IV.

Alleged Impairment of Government's Statutory Rights.

It is contended by Government counsel (brief, pp. 52-59) that an injunction would defeat the statutory right and duty of the United States to enforce the Sherman Act. It is said that if the Government proceeds by supplemental petition in the Pennsylvania suit it will involve the addition of new parties defendant and the taking of evidence in support of the correctness of some of the averments of fact subsequent to 1912. Both are accomplished as easily in the Pennsylvania suit as in the New York suit. Section 5 of the Sherman Act was relied upon by the Government in the New York suit to sustain the venue against all parties defendant and it would be equally efficacious in the Pennsylvania suit. Government counsel concede (brief, p. 45) that the Pennsylvania decree "is perpetual and may be enforced and revised". If enforcement or revision involved bringing additional parties defendant on the record, it could be done as easily as Government counsel were added as parties on April 29, 1937 (R. 135). The lapse of time is no bar to such a procedure. Witness the expediting certificate (R. 157) filed after the suit was 25 years old. No one contends that the Government should try 40 defendants in the Pennsylvania suit and 23 in the New York suit, and the argument to this effect (brief, p. 55) complains of a purely imaginary situation.

A hypothetical contention is next advanced (Government counsel's brief, p. 59) that, if two of the defendants in the New York suit had been previously tried in other courts on subject matter and issues substantially identical to those raised in the New York suit, it would be difficult to reconcile the Government's rights under Section 5 of the Sherman Act with the

right of a party defendant to be tried in only one court on substantially identical subject matter and issues. If and when two or more of the defendants in the New York suit have been previously tried in other and differing jurisdictions on substantially identical subject matter and issues, it would seem to be time enough to determine which of these two positions should prevail. There is no such dilemma today. This Court, speaking by Mr. Justice Holmes, has said [*Hudson County Water Co. v. McCarter*, 209 U. S. 349, 355 (1908)] that:

> "The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side."

Government counsel say (brief, p. 57) that it has never been the practice of the Government to proceed by supplemental petition in an anti-trust case where there are new defendants and a *new* cause of action. And we assert with confidence that it is equally true that the Government has *always* proceeded by supplemental petition in the first court when it sought further relief under the Sherman Act against the same parties on a subsequent development of the original cause of action: *United States v. International Harvester Co., supra,* 274 U. S. 693; *United States v. Standard Oil Co. of N. J.*, 47 F. (2d) 288 (E. D. Mo., 1931, opinion by Judge Stone).

The cases cited by Government counsel at pages 58-59 of their brief do not prove the contrary. The first alleged instance is the Packers' consent decree of 1920, and the earlier case of *Swift & Co. v. United States,* 196 U. S. 375 (1905, opinion by Mr. Justice Holmes). The

first Packers' case concerned agreements in restraint of trade arising in connection only with noncompetitive bidding in fresh meats, noncompetitive price fixing, and interference with various transportation facilities. The Packers' consent decree of 1920 in substance enjoined the Packers from holding any interest in public stockyard companies, or from engaging in the retail meat or wholesale grocery business, but did not involve the violations of the Act enjoined in the earlier decree.

Nor did *Standard Oil Company of Indiana v. United States,* 283 U. S. 163 (1931, opinion by Mr. Justice Brandeis) involve a violation of law similar to that adjudicated in *Standard Oil Company v. United States,* 221 U. S. 1 (1911, opinion by Mr. Chief Justice White). In the later litigation there was before the court an alleged patent pool and that alone. In the original *Standard Oil Company* case there is no part of the decree except Section 6 which by any possibility could be applied in the later case.* A reading of Section 6 demonstrates that nothing in that section contained could apply to this patent pool. Speaking of Section 6, this Court said in *Standard Oil Company v. United States, supra,* 221 U. S. 1, at p. 81:

> ". . . we construe the sixth paragraph of the decree, not as depriving the stockholders or the corporations, after the dissolution of the combination, of the power to make normal and lawful contracts or agreements, but as restraining them from, by any device whatever, recreating directly or indirectly the illegal combination which the decree dissolved."

Since in the *Standard Oil Company of Indiana* case the decree in the original *Standard Oil Company* case

* The decree is set forth at length in Decrees and Judgments in Federal Anti-Trust Cases at pp. 136-144.

could not possibly apply, and since in both the *International Harvester Company* case and the case of *United States v. Standard Oil Company of New Jersey, supra,* 47 F. (2d) 288, the old decrees could have applied, there is a plain distinction between the *Standard Oil Company of Indidna* case and the other two cases.

The next cited instance is of an unreported temporary injunction granted against certain railroads enjoined in *United States v. Trans-Missouri Freight Assn.,* 166 U. S. 290 (1897, opinion by Mr. Justice Peckham). Examination reveals that the conspiracy enjoined in the earlier case was not the subject matter of the second case, the latter being a suit to enjoin certain freight rates initiated under the Interstate Commerce Act of 1906. The earlier case dealt with a freight pool. Furthermore, the second case never proceeded beyond a preliminary restraining order which was in effect for less than a month and was then dissolved on motion of a United States attorney.

We have no way of checking the subject matter involved in the unreported decree against the *Corn Derivatives Institute,* cited by Government counsel at p. 59 of their brief. However, it should be noted that the defendant corporation in the first Corn Products case was there decreed dissolved so that it is more than a fair assumption that the subsequent litigation was against some other party.

V.

The Jurisdiction of the Expediting Court.

Government counsel still stand on their special appearance (brief, pp. 60, 64). Since filing that special appearance (R. 136), Government counsel have participated in the preliminary injunction hearing, filed an answer to the merits, brought about the creation of the Expediting Court (R. 157) and participated in the final injunction hearing before the Expediting Court, both cross-examining the witnesses for the Aluminum Company and submitting evidence of their own.

The Aluminum Company objected (R. 162) to the creation of the Expediting Court and to the participation of Government counsel in the deliberations of that court, but offered to withdraw those objections if Government counsel would withdraw their special appearance or otherwise concede that they were amenable to the decrees of the Expediting Court, it being stated in the objection that it was not sought by this concession to obtain any waiver of the position of Government counsel that they were cloaked with immunity from suit or that the United States was likewise immune from suit. These objections were overruled and the rulings assigned as the 25th, 26th and 27th assignments of error (R. 203-206). The Expediting Court, in overruling the objections, refrained from any discussion of the merits of the special appearance, reserving decision on that question in order to decide the merits of the controversy (R. 183).

Is it not anomalous that a statutory court may be invoked by parties who deny the jurisdiction over them of the court they create? It enables such parties to take the benefit of a favorable decree, as has been done

in this case, while reserving the right to challenge the court's jurisdiction if the decree should be unfavorable.

It is submitted that this cannot be and that the Expediting Court was either improperly created or the special appearance of Government counsel waived.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 281

ALUMINUM COMPANY OF AMERICA, APPELLANT

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR GOVERNMENT COUNSEL NAMED "PARTIES DEFENDANT"

OPINIONS BELOW

The opinion of District Judge Gibson granting a preliminary injunction (R. 149) is reported in 19 F. Supp. 374. The opinion of the specially constituted Expedition Court denying a permanent injunction (R. 180) has not been reported.

JURISDICTION

The final decree of the Expedition Court was entered July 27, 1937 (R. 186). On the same day the petition for appeal was filed (R. 187), and an

order was entered allowing appeal (R. 188). Probable jurisdiction was noted by this Court on October 11, 1937.

Jurisdiction of this Court is invoked under Section 238 of the Judicial Code, as amended (U. S. C., Tit. 28, Sec. 345), and the Act of February 11, 1903, c. 544, 32 Stat. 823, as amended, known as the Expediting Act (U. S. C., Tit. 15, Sec. 29).

QUESTION PRESENTED

Whether the district court, in which an antitrust consent decree against Aluminum Company was entered in 1912, erred in refusing to enjoin counsel for the United States from prosecuting a comprehensive antitrust suit, filed in 1937 in another district against 63 defendants, seeking dissolution of the Aluminum Company and injunctive relief against an alleged monopoly.

STATUTES INVOLVED

The pertinent provisions of the Sherman Act, c. 647, July 2, 1890, 26 Stat. 209 (U. S. C., Tit. 15, Sec. 5), the Clayton Act, c. 323, October 15, 1914, 38 Stat. 730, as amended (U. S. C., Tit. 15, Sec. 22), and the Expediting Act, c. 544, February 11, 1903, 32 Stat. 823, as amended (U. S. C., Tit. 15, Secs. 28–29), are referred to in the body of the brief.

STATEMENT

This is an appeal from a decree (R. 186) of a specially constituted Expedition Court, sitting as

the United States District Court for Western Pennsylvania, denying a permanent injunction to restrain prosecution of an antitrust injunction suit instituted by the United States in the United States District Court for Southern New York against appellant and others.

On April 23, 1937, the United States instituted suit in equity under the Sherman Act in the District Court for the Southern District of New York, naming as defendants the appellant and 62 others (R. 92). The bill charges that defendants have monopolized and conspired to restrain and monopolize interstate and foreign trade and commerce in aluminum and related commodities (R. 105). It alleges that Aluminum Company has a 100 per cent monopoly of virgin aluminum manufactured in the United States, a 90 per cent monopoly of aluminum sheet, a 95 per cent monopoly of aluminum alloy, and virtually a 100 per cent monopoly of extruded and structural shapes, wire, cable, bars, rods, and tubing made from aluminum (R. 106–108). By virtue of such monopolistic control, it is alleged, Aluminum Company has the illegal power to fix arbitrary prices and exclude others who would, except for such monopolistic control, engage in competition with Aluminum Company (R. 108). The bill also alleges that defendants have preserved the monopoly by curtailing imports through cartel agreements and intimidation of foreign producers (R. 108–120), that it

has acquired and maintained the monoply by unfair and oppressive tactics (R. 121–132), and that it has used its monopolistic power to fix arbitrary, oppressive, and unreasonable prices (R. 131–132).

The New York petition prays for (1) dissolution of Aluminum Company, rearrangement of its properties under several independent corporations, and appointment of receivers and trustees to effectuate the dissolution, (2) divorcement of Aluminum Company and Aluminium Limited by requiring stockholders common to both to divest themselves of stockholdings in one or the other of the two companies, and (3) injunctive relief against further monopoly and restraints (R. 133–135).

On April 29, 1937, Aluminum Company filed an ancillary petition in a suit entitled "United States of America v. Aluminum Company of America", instituted in 1912 in the Western District of Pennsylvania, asserting that the subject matter and issues in the New York suit were identical with those adjudicated by the consent decree filed in the Pennsylvania court on June 7, 1912 (R. 78, 80). The original suit in Pennsylvania had been filed on May 16, 1912 (R. 8), and had terminated three weeks later with a consent decree canceling restrictive covenants in five contracts and enjoining Aluminum Company, its officers, agents, and representatives from engaging in certain monopolistic, unfair, and discriminatory practices (R. 64–73). Appellant's ancillary petition took the position

that since the jurisdiction of the Pennsylvania court first attached to the subject matter and parties, its jurisdiction was exclusive and should be protected (R. 89). It alleged that Aluminum Company, its subsidiaries, officers, and directors would suffer irreparable injury if they were required to defend the New York suit (R. 89–90).

On the same day, April 29, 1937, a district judge in the Western District of Pennsylvania, without notice to the United States, issued an order making the Attorney General and seven other members of the Department of Justice "parties defendant" in the Pennsylvania suit of 1912, and temporarily restraining them from prosecuting the New York suit (R. 135–136). Government counsel entered a special appearance May 6, 1937, for the purpose of moving to quash service of subpoenas made upon them outside the Western District of Pennsylvania, to set aside the marshals' returns, to dismiss Aluminum Company's petition, and to vacate the restraining order (R. 136–138). On May 14, 1937, the district judge denied the motion (R. 153), and granted a preliminary injunction restraining government counsel from prosecuting the New York suit or proceeding in any court other than the Pennsylvania court against Aluminum Company, 19 subsidiaries, 17 officers and directors, and two former directors (R. 141–142).

On June 3, 1937, government counsel filed an answer to the ancillary petition, averring that the

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subject matter, issues, parties, and relief sought in the New York suit differed substantially from those in the 1912 Pennsylvania suit (R. 153–156).

On June 8, 1937, the Attorney General filed a certificate in the Pennsylvania case under the Expediting Act (U. S. C., Title 15, Sec. 28), certifying that because of the district judge's action in making government counsel "parties defendant" and temporarily enjoining them from proceeding in the New York suit, the cause had recently become a case of "general public importance" requiring the prompt consideration of not less than three circuit judges (R. 157–160).

On June 14, 1937, Circuit Judges Davis, Thompson, and Biggs were designated to comprise the Expedition Court to determine the issues presented by Aluminum Company's ancillary petition and the answer and motions of government counsel (R. 160–162). These issues were tried before the Expedition Court on June 23, 1937 (R. 219), the Aluminum Company presenting the testimony of two witnesses to support its claim of inconvenience and irreparable injury in defending the New York suit (R. 224–257).

On July 21, 1937, the Expedition Court filed an opinion holding that the subject matter, parties, issues, and relief sought in the New York suit differed substantially from those of the Pennsylvania suit, that the two suits involved no conflict, and that appellant would suffer no irreparable in-

jury in defending the New York suit, together with supporting findings of fact and conclusions of law (R. 174–185). It entered a final decree July 27, 1937, dismissing appellant's petition, vacating the *ex parte* order making government counsel parties defendant, and denying the injunctive relief sought by appellant (R. 186).

SUMMARY OF ARGUMENT

I. There is no merit in appellant's contention that it is entitled to an injunction against the maintenance of the New York suit on the ground that the subject matter and issues presented in that suit are identical with those involved in the Pennsylvania consent decree entered against appellant in 1912. The lack of identity in subject matter is of itself a sufficient ground for denial of the relief sought. *Watson* v. *Jones,* 13 Wall. 679. Entry of the consent decree in Pennsylvania does not exclude all other courts from adjudicating related subject matters in a cause of action arising 25 years later. *Buck* v. *Colbath,* 3 Wall. 334; *Memphis City Bank* v. *Tennessee,* 161 U. S. 186, 192–193. The New York petition names 62 new defendants. The New York suit differs from the Pennsylvania suit in the issues presented. There is striking contrast between the charge in the New York petition that appellant's monopoly is illegal *per se* and any issue presented by the Pennsylvania petition. The prayer for dissolution of appellant and distribu-

tion of its properties in the New York suit seeks relief far more drastic than that called for by the Pennsylvania petition and afforded by the consent decree.

II. Even if the subject matter and issues of the two suits were identical appellant would not be entitled to the relief sought. The principle that a court of equity which first acquires jurisdiction of a cause retains exclusive jurisdiction is a rule of necessity which applies only "to prevent the defeat or impairment of its jurisdiction." *Steelman, Trustee* v. *All Continent Corporation,* 301 U. S. 278, 289; *Kline* v. *Burke Construction Co.,* 260 U. S. 226, 229, 235; *Penn Co.* v. *Pennsylvania,* 294 U. S. 189, 198. In no way does the New York suit operate to "impair" or "defeat" the jurisdiction of the Pennsylvania court. It does not affect any *res* under the protection of the Pennsylvania court; it is not a suit by a defeated party to relitigate issues adjudicated against it; and it does not involve any multiplicity of suits regarding any matter in active litigation in the Pennsylvania court. The finding of the Expedition Court that "the New York suit does not subject Aluminum Company to the peril of two conflicting decrees" (R. 176) is manifestly correct. Appellant acquired no vested right under the consent decree to be immune from subsequent dissolution suits in other courts.

III. Appellant has shown no facts which justify the intervention of a court of equity to re-

strain prosecution of the New York suit. The inconvenience to which it may be subjected in retaining counsel and producing records in the defense of that suit is not irreparable injury. It is not shown that the New York suit is vexatious or designed to harass appellant. Although appellant may assert in the New York suit any equities which may exist in its favor and may call for a preliminary trial of issues raised by a motion to dismiss (Equity Rule 29), it has filed an answer in the New York court without raising any question of *res judicata,* estoppel or identity of suits. Appellant has shown no injury which it may suffer by reason of the existence of two harmonious decrees.

The injunctive relief sought by appellant would defeat the statutory right of the United States to select the venue. Moreover, it would impair the right and duty of the United States to enforce the Sherman Act, because the purpose of the New York suit cannot be accomplished by contempt proceedings under the consent decree or by supplemental proceedings in the Pennsylvania suit. See *United States* v. *International Harvester Co.,* 274 U. S. 693.

IV. Jurisdiction of the Expedition Court was properly invoked under Section 1 of the Expediting Act. *Ex parte United States,* 226 U. S. 420, 424. The maintenance of a special appearance by government counsel did not impair the jurisdiction of the specially constituted court. *Cf. Wabash Western Railway* v. *Brow,* 164 U. S. 271, 278.

ARGUMENT

I

THE NEW YORK SUIT SHOULD NOT BE ENJOINED, BECAUSE THE PARTIES, SUBJECT MATTER, ISSUES, AND RELIEF SOUGHT ARE SUBSTANTIALLY DIFFERENT FROM THOSE IN THE 1912 SUIT

Appellant's contention that it is entitled to an injunction restraining the prosecution of the New York suit rests upon the proposition that the subject matter and issues presented in that suit are identical with those which were determined in the Pennsylvania suit (R. 80; Brief, p. 12).

The identity which must exist between two suits if one is to bar the maintenance of the other was early stated by this Court in *Watson* v. *Jones,* 13 Wall. 679. In that case it was held that a suit in a federal court to enjoin defendants from taking possession of certain church property was not barred by the determination of a state court in a pending proceeding that defendants were lawful officers of the church, because subsequent to the rendition of the first decree defendants' status had changed. In stating the conditions under which the pendency of one suit may bar the prosecution of another, this Court said (p. 715):

> *There must be the same parties,* or at least such as represent the same interest, *there must be the same rights asserted, and the same relief prayed for. This relief must be*

> *founded on the same facts, and the title or essential basis of the relief sought must be the same.* The identity in these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties. [Italics supplied.]

The same principle was recognized in *The Haytian Republic,* 154 U. S. 118, 124, and in *Pacific Live Stock Co.* v. *Oregon Water Board,* 241 U. S. 440. In the latter case it was held that the pendency of suits instituted by plaintiff to establish certain water rights provided no basis for restraining the prosecution of a proceeding before a state administrative body involving the same water rights and the same claimants. The Court stated (p. 447):

> The rule that where the same matter is brought before courts of concurrent jurisdiction, the one first obtaining jurisdiction will retain it until the controversy is determined, to the entire exclusion of the other, and will maintain and protect its jurisdiction by an appropriate injunction, is confined in its operation to instances *where both suits are substantially the same, that is to say, where there is substantial identity in the interests represented, in the rights asserted and in the purposes sought.* [Italics supplied.]

In *United States* v. *Southern Pacific Co.,* 259 U. S. 214, the United States sought a decree under the Sherman Act requiring the Southern Pacific to

relinquish control of the Central Pacific on the ground that their lines were competitive. The Central Pacific contended that an earlier suit approving the acquisition by the Southern Pacific of certain stock of the Central Pacific constituted a bar to this proceeding. This Court rejected that contention, saying (p. 240):

> It is insisted that the decree in the *Union Pacific Case* is decisive of this controversy, and amounts to an adjudication against the Government of the issues involved. The conclusive answer to this contention is that the Central Pacific was not a party to that suit up to the final decree in this court. That suit and the present one do not relate to the same subject-matter. The issues and questions, therein decided, are not the ones presented for decision here. *Cromwell* v. *County of Sac,* 94 U. S. 351; *United Shoe Machinery Co.* v. *United States,* 258 U. S. 451.

The requisite identity of parties and subject matter is not established merely by showing a close relationship between two suits. In *Buck* v. *Colbath,* 3 Wall. 334, an action of trespass was instituted in a state court against a United States marshal for the taking of goods seized under a writ of attachment. In affirming a judgment for the plaintiff this Court rejected the defendant's contention that the federal court, which had first acquired jurisdiction of the cause in which the at-

tachment was issued, had exclusive jurisdiction to determine the issues presented in the state proceeding. The Court stated (p. 345):

> * * * it is not true that a court, having obtained jurisdiction of a subject-matter of a suit, and of parties before it, thereby excludes all other courts from the right to adjudicate upon other matters having a very close connection with those before the first court, and, in some instances, requiring the decision of the same questions exactly.
>
> In examining into the exclusive character of the jurisdiction of such cases, we must have regard to the *nature of the remedies, the character of the relief sought, and the identity of the parties* in the different suits. [Italics supplied.]

In denying appellant's application for injunctive relief in this proceeding (R. 186) the Expedition Court found that the parties, subject matter, issues and relief prayed for in the New York suit were substantially different from those of the 1912 suit (R. 176, 179). An examination of the petitions filed in the two suits [1] demonstrates that appellant's objections to this finding (R. 191, 194–195) are without merit.

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[1] Reference to pleadings is proper to determine the scope of the decree entered in 1912. *Vicksburg* v. *Vicksburg Water Works Co.*, 206 U. S. 496, 508; *Vicksburg* v. *Henson*, 231 U. S. 259, 269; *Bates* v. *Bodie*, 245 U. S. 520, 526; *Oklahoma* v. *Texas*, 256 U. S. 70, 86.

A. THE PARTIES DEFENDANT IN THE TWO SUITS ARE DIFFERENT

In the Pennsylvania suit appellant was the sole defendant (R. 9). The petition filed in New York names 62 additional defendants (R. 95). Appellant contends that insofar as the additional defendants are its wholly owned subsidiaries or its officers, agents, and directors they are bound by the terms of the 1912 decree (R. 80; Brief, p. 23). Assuming that this is true, there remain in the New York suit 23 defendants who bear no such relation to appellant (R. 80, 95). Three of these, including Aluminium Limited, are corporations which have been organized since 1912 (R. 96, 101–102).

In support of its contention that the New York suit should be enjoined despite the joinder of additional parties, appellant cites (p. 24) *Thompson* v. *Roberts,* 24 How. 233, and *Green* v. *Bogue,* 158 U. S. 478. These cases simply hold that issues adjudicated between two parties in one suit are *res judicata* as to them in a subsequent suit where there are additional parties. This elementary proposition is not disputed, but it has no application here. The question now presented is not whether certain issues adjudicated by the consent decree are binding upon Aluminum Company as *res judicata,* but whether the New York suit is substantially identical to the 1912 suit and should therefore be enjoined.

In the present case appellant makes no contention that all of the defendants named in the New York suit were parties defendant, or are in privity with parties defendant, in the Pennsylvania suit. Thus, in contending that appellant and 39 other defendants in the New York suit are bound by the terms of the consent decree, appellant tacitly concedes that 23 of the defendants in that suit have no connection with it upon which a claim of privity of interest may be predicated. Indeed, appellant expressly disclaims any desire to restrain the prosecution of the New York suit as to those defendants (Brief, p. 23). In view of the substantial increase in the number of defendants, there does not exist the identity of parties to the two suits which is necessary to make the consent decree a bar to the prosecution of the New York suit.

B. THE SUBJECT MATTER OF THE TWO SUITS IS DIFFERENT

The subject matter of the New York petition, which describes the growth of the aluminum monopoly from 1888, when Aluminum Company was organized, to 1937, is necessarily related to the subject matter of the 1912 suit. Both petitions charge violations of the Sherman Act, and certain of the allegations contained in the New York petition set forth facts which are also alleged in the 1912 petition. But the subject matter of the New York suit differs substantially from that of the Pennsylvania suit.

The present monopoly, which provides the basis for the New York suit, differs greatly from appellant's control of an industry comparatively in its infancy in 1912. Since the entry of the consent decree, appellant has expanded enormously, and it now occupies with reference to the aluminum and related industries a position of dominance which it did not approach in 1912. Thus, in 1912 the assets of appellant and its subsidiaries were estimated at $27,000,000 (R. 27), whereas in 1934 its net worth was shown by its annual report to be $174,808,682 (R. 106),[2] excluding from consideration those properties which were transferred to Aluminium Limited at the time of its organization in 1928 (R. 116). In the 1912 petition it was alleged that appellant produced, through its subsidiary, Aluminum Ore Company, approximately 80 per cent of the alumina used in the United States in the manufacture of aluminum (R. 25), while in the New York petition it is alleged that appellant now produces 100 per cent of the alumina used in the United States for the production of aluminum (R. 106). Appellant admits that it now produces 100 per cent of all the virgin aluminum manufactured in the United States, and that it uses 100 per cent of the bauxite used in the United States for the production of aluminum (R. 283). Appel-

[2] In its answer in the New York suit appellant asserts that its net worth in 1934, as shown by its annual report, was $169,505,514.55 (R. 282).

lant is now an integrated monopoly. In addition to the interests it possessed in 1912 in bauxite deposits, alumina production, and the manufacture of aluminum, it has since acquired additional fabricating plants (R. 97, 98), electric power plants (R. 98–100), railroads (R. 98, 100–101), a chemical solvent plant (R. 99), a wharfage company (R. 100), holding companies (R. 100–102), a steamship company (R. 100), and a foreign corporation engaged in mining bauxite (R. 101). In the words of the Expedition Court, there is "only such similarity as may exist between an infant and a full grown man" (R. 183).

The New York petition describes a far-reaching scheme for the restraint of foreign competition which has been adopted since the entry of the consent decree in 1912. It alleges that appellant, for the purpose of restraining competition from foreign manufacturers, acquired vast interests in foreign corporations engaged in the production of bauxite, aluminum and electric energy (R. 108–120); that in 1928 it organized defendant Aluminium Limited as a Canadian corporation and transferred to it substantially all of these foreign holdings (R. 116); and that through the ownership by a small group of persons of a controlling interest in both Aluminum Company and Aluminium Limited (R. 116), the latter corporation is employed by Aluminum Company as an instrumentality to evade the antitrust laws by making alli-

ances and agreements as a foreign corporation with other foreign producers to restrict competition and curtail imports into the United States (R. 117–120). It is alleged that Aluminium Limited, by agreement with appellant, does not compete in the United States (R. 117).

The New York petition alleges that appellant's monopoly has been acquired and maintained by unfair and oppressive tactics (R. 121–133). Because it comprehensively attacks the monopolistic activities of Aluminum Company since its origin, the petition necessarily describes the complete history of the monopoly, including the five restrictive contracts canceled by the 1912 decree (R. 109–110, 122–125). Most of the allegations, however, relate to monopolistic activities after 1912 (R. 106–108, 110–120, 125–132). The circumstances which provide the basis for the New York suit differ materially from those which provided the subject matter of the Pennsylvania suit.

The substantial alteration in conditions is of itself a sufficient ground for the denial of the relief sought by appellant. The consent decree cannot operate as a bar, because the New York suit rests upon substantially different facts. As stated in *Memphis City Bank* v. *Tennessee,* 161 U. S. 186, 193, "the judgment could, therefore, not be an estoppel or operate in any manner as a bar to the maintenance of this action, based upon facts of a totally different nature, and arising long after the

judgment was obtained in the former action." In *Watson* v. *Jones,* 13 Wall. 679, this Court stated that if the pendency of one suit is to be set up to defeat another, the relief sought in the two suits must be founded on the same facts.

Appellant contends that no significance is to be attached to the change in circumstances which has occurred since 1912 because the consent decree embodied a continuing injunction. Thus it is stated that "the Pennsylvania decree was not confined to then existing situations, but was designedly drawn as a comprehensive and permanent regulation of the future" (Appellant's Brief, p. 26). An injunction, though prospective in operation, is no broader in scope than is justified by the facts alleged in the petition by which it is procured. See *Conway* v. *Taylor's Executor,* 1 Black 603, 632; *Wyoming* v. *Colorado,* 286 U. S. 494, 508. It is not to be presumed that the consent decree was intended to reach every conceivable violation of the Sherman Act. *Swift & Co.* v. *United States,* 196 U. S. 375, 396; *New Haven R. R.* v. *Interstate Com. Comm.,* 200 U. S. 361, 404.

The language quoted by appellant (p. 27) from the opinion of this Court in *Baltimore Steamship Co.* v. *Phillips,* 274 U. S. 316, 321, states clearly the basis for distinction between the New York and Pennsylvania suits. In that case it was held that a decree in favor of the plaintiff upon a libel in admiralty to recover damages for personal injuries

sustained by reason of the negligence of defendant operated as a bar to the maintenance of a second suit at law for the same purpose where the allegations of fact were substantially the same in both cases. In holding that the two suits were grounded upon the same cause of action this Court pointed out that a cause of action consists of a state of facts which result in a legal wrong. In the present case it has been shown that the facts alleged in the New York petition establish a new and distinct violation of the Sherman Act.

C. THE ISSUES PRESENTED IN THE TWO SUITS ARE DIFFERENT

Appellant earnestly endeavors to show that the petition filed in the New York suit "makes no charges that are not enjoined by the Pennsylvania decree" (Brief, pp. 14–23). As determined by the Expedition Court (R. 184), the principal object of the earlier suit was to restrain appellant from continuing certain devices it had employed to perpetuate its monopoly after the expiration of its basic patents in 1906 and 1909 (R. 9–11). An agreement with a Swiss company dividing world markets and four contracts imposing restrictive covenants were alleged to constitute an unlawful restraint of trade (R. 17–22), and certain acts of unfair competition were charged (R. 23–25). By reason of these agreements, contracts, and practices, it was alleged that appellant had maintained a monopolistic position in the aluminum industry

(R. 25–26). In the section of the petition devoted to a statement of the violation charged, it was stated explicitly that that suit was not predicated upon any illegality in the monopoly possessed by appellant at the time of the expiration of its basic patents, or in its acquisition of a monopoly of bauxite deposits in the United States (R. 28). The petition expressly conceded that "defendant's practical monopoly in both bauxite and the manufacture of aluminum in the United States which it held at the expiration of said patents was lawful" (R. 29). It charged only that the means used to maintain that monopoly were unlawful, and it proceeded to specify wherein the five contracts offended against the Sherman Act (R. 29–30).

The object of the New York suit is in striking contrast to the limited objectives of the 1912 suit. The New York petition charges not only the maintenance of a monopoly by contracts and conspiracies in restraint of trade and by unfair trade practices, but goes further and alleges that Aluminum Company's 90 to 100 per cent control of virgin aluminum and related products constitutes an illegal monopoly *per se* (R. 108). That monopoly is described in Section I of the petition (R. 105–

[3] Paragraphs 41–52 of the New York petition describe appellant's monopoly, alleging its 100 per cent control of virgin aluminum, 90 per cent control of sheet, 100 per cent control of extruded and structural shapes, etc. (R. 106–108). Paragraph 53 charges that this monopoly is illegal *per se* by stating explicitly that appellant's monopolistic con-

108).[8] It is alleged that appellant's 100 per cent monopoly of virgin aluminum with the accompanying power to fix arbitrary and discriminatory prices and exclude competitors has the effect of "suppressing and preventing substantial competition which would otherwise arise" in the aluminum industry (R. 108). It is also alleged that appellant has suppressed potential competitors (R. 132).

In view of the difference which exists between the issues of the two suits it is clear that the consent decree cannot operate as a bar to the maintenance of the New York suit. Indeed, in recognition of this fact, appellant has not seen fit to raise the defense of *res judicata* in its answer in the New York suit (R. 269–322).

D. THE RELIEF SOUGHT IN THE TWO SUITS IS DIFFERENT

As stated by the Expedition Court in its opinion, it is in the nature of the relief sought that the dif-

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trol "is inimical to the public interest and in violation of Section 2 of said Sherman Act" (R. 108). Appellant seeks to restrict the meaning of that paragraph, saying that it is "no more than a specification of paragraph 40" (Brief, p. 17). An examination of the petition as a whole shows that paragraph 40 is but an introduction to the three causes of action alleged in the three sections of the petition, each of which terminates with a charge that the facts alleged therein constitute a violation of the Sherman Act (R. 108, 120, 132). That paragraph 53, the charging paragraph of the first cause, is intended to allege that appellant's monopoly is illegal *per se* is clearly shown by the prayer for relief, which asks that "Aluminum Company be adjudged and decreed to be a monopoly in violation of Section 2 of said Sherman Antitrust Act" (R. 133).

ference between the 1912 and the New York suits is most clearly illustrated (R. 184).

The prayer for relief contained in the 1912 petition (R. 31–36) sought an adjudication that appellant had acquired a monopoly unlawfully by means of certain contracts, agreements, and practices (R. 31). It asked a decree canceling restrictive covenants in five agreements (R. 32–33) and an injunction restraining appellant, its officers, agents and representatives from entering into like agreements (R. 33) and from employing certain practices deemed to be in violation of the Sherman Act (R. 34–36).

The relief sought in the New York suit goes far beyond this. It seeks an adjudication of the invalidity of the monopoly held by appellant (R. 133). It prays for a decree dissolving appellant and redistributing its properties, together with such divestiture by all defendants of their stockholdings and properties as may be necessary to dissolve effectively appellant's monopoly (R. 134). To this end the suit seeks the appointment of receivers and trustees who may be needed to effectuate the dissolution (R. 134). Finally, it is asked that the agreement under which Aluminium Limited refrains from competing with appellant in the United States be enjoined, and that in order to establish an effectual guarantee against further suppression of competition between the two corporations, the defendants be required to divest themselves of

such stock holdings as may be necessary to prevent the simultaneous control of both corporations by the same group of defendants (R. 134).

Dissolution was not requested by the petition, nor was it decreed by the consent decree of 1912. Such relief would have been inappropriate and beyond the scope of that suit. A decree "is not conclusive on any question which, from the nature of the case or the form of the action, could not have been adjudicated in the case in which it was rendered." *Ash Sheep Co.* v. *United States,* 252 U. S. 159, 170.

The decree was entered on the express assumption that "the defendant, Aluminum Company of America, has a substantial monopoly of the production and sale of aluminum in the United States" (R. 72). It is apparent therefore that the questions of primary importance in the New York suit—the existence of a monopoly illegal *per se* and the dissolution of Aluminum Company—were neither presented nor adjudicated in the Pennsylvania suit.

The decisions in *Green* v. *Bogue,* 158 U. S. 478, and *Fidelity & Deposit Co.* v. *Gaston, Williams & Wigmore,* 13 F. (2d) 267, cited in appellant's brief (p. 25), have no application here. It is not disputed that *res judicata* may apply to issues arising in a subsequent suit where different relief is sought. Undoubtedly there are in the New York suit issues which were conclusively adjudicated against Alu-

minum Company by the decree of 1912, such as the illegality of the five restrictive contracts which were canceled (R. 64–69). Such determinations are to be observed by the New York court, but they do not preclude the maintenance of that suit, because it rests upon a state of facts materially different from that which gave rise to the Pennsylvania suit.

II

THE NEW YORK SUIT WILL NOT "IMPAIR" OR "DEFEAT" THE JURISDICTION OF THE PENNSYLVANIA COURT OR ANY RIGHTS ACQUIRED UNDER THE 1912 CONSENT DECREE

Appellant would not be entitled to an injunction against the New York suit even if it could show that the subject matter is substantially identical with that presented to the Pennsylvania court in 1912, because it has failed to show that the New York suit would in any way impair or defeat the jurisdiction of the Pennsylvania court or any rights acquired under the consent decree. In the absence of such a showing there is no occasion for the intervention of a court of equity.

A court first acquiring jurisdiction over a subject matter may enjoin a second suit on the identical subject matter "to prevent the defeat or impairment of its jurisdiction." *Steelman, Trustee,* v. *All Continent Corporation,* 301 U. S. 278, 289. Such relief will be granted only to protect the

jurisdiction of the court from active interference or to avoid impairment of its decree. The rule is "based upon necessity", and where the second suit in no way "impairs" or "defeats" the jurisdiction of the first court, the necessity does not exist and the rule does not apply. *Kline* v. *Burke Construction Co.*, 260 U. S. 226, 229, 235. In that case the Burke Construction Company had instituted in a federal court in Arkansas a suit for breach of a street paving contract. The defendant thereafter brought a suit upon the same contract in a state court against the Burke Construction Company and the sureties on the bond which had been given for the faithful performance of the contract. The Burke Construction Company then filed an ancillary bill in the federal court to enjoin the prosecution of the suit in the state court. In sustaining the order of the district court denying the injunctive relief, this Court held that although the second suit "presented substantially the same issues" and sought the same kind of relief, it should not be enjoined because it did not tend to "defeat" or "impair" the jurisdiction first acquired by the federal court. It said (pp. 229, 235):

> It is settled that where a federal court has first acquired jurisdiction of the subject-matter of a cause, it may enjoin the parties from proceeding in a state court of concurrent jurisdiction where the effect of the action would be to *defeat* or *impair* the jurisdiction of the federal court. * * *

> The rule, therefore, that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction is a rule of right and of law based upon necessity, and *where the necessity, actual or potential, does not exist, the rule does not apply.* Since that necessity does exist in actions *in rem* and does not exist in actions *in personam,* involving a question of personal liability only, the rule applies in the former but does not apply in the latter. [Italics supplied.]

This principle has been reaffirmed in *Penn Co.* v. *Pennsylvania,* 294 U. S. 189, 198, where it is said that the jurisdiction attaching to the first court "is exclusive only so far as its exercise is necessary" and "does not extend beyond the purpose for which it is allowed, to enable the court to exercise it appropriately and to avoid unseemly conflicts."

Appellant predicates its claim for an injunction against the New York suit upon an ambiguous and unsupported contention that it will be subjected to the "peril of conflicting regulation" or "conflicting adjudications" of two courts (Brief, pp. 11, 28, 35, 45). The "conflict" which it professes to fear must mean either (1) that the New York suit contemplates a decree requiring disobedience of the Pennsylvania consent decree, or (2) that the petition for dissolution in the New York suit conflicts with some supposed affirmative right con-

ferred by the consent decree. It is not apparent which of these two possible "conflicts" appellant has in mind.

If the relief sought in New York required Aluminum Company to disobey the Pennsylvania decree, it would constitute an attack upon the decree similar to that condemned in *Looney* v. *Eastern Texas R. R. Co.*, 247 U. S. 214. If the New York suit involved even a remote probability of such a conflict, it is fair to assume that appellant would have called it to the Court's attention. It is manifest from a comparison of the pleadings in the two cases that the New York suit, far from seeking to release the Aluminum Company from its obligations under the consent decree, seeks much more drastic relief against it, and tends to support, rather than break down, the ultimate objective of the consent decree. The decree did not require Aluminum Company to do any affirmative act which the New York suit now seeks to prohibit. The only affirmative action required under the consent decree was the cancelation of restrictive covenants in five contracts. The New York petition, of course, does not seek a revival of the restrictive covenants, but on the contrary joins with the Pennsylvania petition in expressing disapproval of such contracts. It seeks three major forms of relief: (a) dissolution of Aluminum Company, (b) divorcement of Aluminum Company from its Canadian affiliate, Aluminium Limited, and (c) general

injunctive relief against monopoly and restraint of trade. No part of this relief contemplates anything approaching disobedience of the consent decree. If the New York court should grant the prayer for dissolution and for divorcement of Aluminum Company from Aluminium Limited, Aluminum Company obviously would not be required to do any affirmative act in conflict with its duties under the consent decree. If the New York court should prohibit Aluminum Company from engaging in monopolistic and restrictive practices in addition to those enjoined by the consent decree, it is difficult to see in what manner this could subject it to the peril of conflicting decrees.

As it is apparent therefore that the New York suit does not subject Aluminum Company to the "peril of conflicting regulation" in the sense of requiring disobedience of the consent decree, the suggestion of "conflict" must have been intended to imply that the consent decree conferred upon Aluminum Company a perpetual right of non-dissolution and that the New York suit will impair such right.

This contention is so fundamental and dangerous that appellant refrains from urging it explicitly, and prefers to rest upon vague implications. The consent decree reads in the negative, prohibiting Aluminum Company from engaging in certain unfair, discriminatory and monopolistic practices. It did not guarantee to Aluminum Company any conditional right to maintain its monopoly under

"regulation" of the Pennsylvania court, as seems to be implied in appellant's brief (pp. 11, 28–30, 45).

Although appellant now disclaims any contention that the consent decree is a "contract", its petition alleges that the decree is "binding upon" the United States (R. 80). Also its brief suggests that the United States may not "avoid the binding effect" of the Pennsylvania decree (p. 25), and that Aluminum Company is entitled to "rely upon" it (p. 29), citing *United States* v. *International Harvester Co.*, 274 U. S. 693, 703. The language quoted from the *Harvester* case does not mean that a company enjoined by a consent decree is guaranteed immunity from dissolution under a subsequent suit based upon a new cause of action. There is no merit in the contention that the decree of 1912 is "binding upon" the United States in the sense that it precludes a new suit 25 years later to obtain more drastic relief under a different theory. That this Court did not intend to imply in the *Harvester* case, *supra*, that a consent decree is a binding contract between the United States and the defendant enjoined is apparent from the opinion in *United States* v. *Swift & Co.*, 286 U. S. 106, 115, where the Court expressly rejected the contention that a consent decree may be treated as a contract between the parties.

If the consent decree had purported to perpetuate a monopoly or confer affirmative rights upon Aluminum Company to the detriment of the pub-

lic, the decree to that extent would be void, because the law officers of the government cannot bargain away the public's right to enforcement of the antitrust laws. See *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 408–409; *United States* v. *Southern Pacific Co.*, 259 U. S. 214, 240.

Even if a consent decree were held to be a binding obligation upon the United States, it is not clear which of its provisions Aluminum Company would have occasion to "rely upon." The United States was the victorious party in the 1912 proceeding, and therefore could have no reason for attacking the injunctive provisions of the decree. The defeated party is in no position to show that it acquired any affirmative vested right under the decree, which the New York suit threatens to impair.

The mere prospect of two decrees covering related or partially overlapping subject matters does not warrant an injunction. There must be a clear showing that the New York suit threatens to interfere with the jurisdiction of the Pennsylvania court or defeat or impair affirmative rights acquired under the consent decree.

It may be noted that although Aluminum Company is solicitous to "protect" the jurisdiction of the Pennsylvania court, that court [4] has held that

[4] Appellant's brief recognizes (p. 34) that by virtue of the expediting certificate the "interpretation and enforcement" of the consent decree has been removed permanently to the Expedition Court sitting as the district court. This would seem to be the proper interpretation of the Expediting Act (U. S. C., Tit. 15, Sec. 28). See *Ex parte United States*,

the New York suit does not involve any infringement upon its jurisdiction. It found that "the New York suit does not subject Aluminum Company to the peril of two conflicting decrees" (Finding 8, R. 176). The decision of a specially constituted three-judge court upon a question of fact will not be set aside except upon a very clear showing of error. *Chicago G. W. Ry.* v. *Kendall,* 266 U. S. 94, 100–101.

Appellant virtually concedes that the New York suit is not designed to "reverse" any action taken by the Pennsylvania court in 1912, for it does not assign as error the Expedition Court's finding that:

> The New York suit does not attack the affirmative injunctive provisions of the 1912 decree or seek to reverse any action taken by the District Court for the Western District of Pennsylvania in the suit of 1912. [Finding 7, R. 176.] [See assignment of errors, R. 188–206.]

As it is manifest that the New York suit seeks additional relief against the unsuccessful party to the earlier suit, there could be little basis for asserting that it is designed to reverse or attack the earlier adjudication.

The circumstances under which a second suit may be enjoined "to prevent the defeat or impairment" of the jurisdiction acquired by the first

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226 U. S. 420; *United States* v. *California Cooperative Canneries,* 279 U. S. 553, 557–558; *Swift & Co.* v. *United States,* 276 U. S. 311, 322–323.

court are illustrated by the following classes of cases: (1) Where the first court has actual or potential jurisdiction over a *res,* such as a bankrupt estate, and the second suit would interfere with the exclusive jurisdiction of the first court to administer the *res. Steelman, Trustee* v. *All Continent Corporation,* 301 U. S. 278; *Continental Bank* v. *Rock Island Railway,* 294 U. S. 648, 675; *Local Loan Co.* v. *Hunt,* 292 U. S. 234, 241. (2) Where the defeated litigant in the first suit institutes a proceeding in a second court to relitigate the issue and deprive the successful litigant of the fruits of his victory. *Kessler* v. *Eldred,* 206 U. S. 285; *Toledo Scale Co.* v. *Computing Scale Co.,* 261 U. S. 399; *Looney* v. *Eastern Texas R. R. Co.,* 247 U. S. 214; *Trees* v. *Glenn,* 319 Pa. 487. (3) Where one of the litigants in the first suit before final adjudication institutes additional suits on the identical subject matter for the purpose of harassing and vexing his adversary by relitigating issues awaiting final determination in the first suit. *Georgia Power Co.* v. *Tennessee Valley Authority,* 89 F. (2d) 218 (C. C. A. 5, 1937; cert. den. Oct. 11, 1937); *Iron Mountain R. Co.* v. *Memphis,* 96 Fed. 113 (C. C. A. 6, 1899).

1. CASES IN WHICH A SECOND SUIT WOULD INTERFERE WITH THE FIRST COURT'S ADMINISTRATION OF A *RES*

Where the first suit is *in rem,* involving the property of a bankrupt estate, *Steelman, Trustee* v. *All Continent Corporation,* 301 U. S. 278; *Local Loan Co.* v. *Hunt,* 292 U. S. 234, 241, or the re-

organization of a corporation's assets, *Continental Bank* v. *Rock Island-Railway,* 294 U. S. 648, 675, a second suit involving a portion of the same property will be enjoined, because it tends to impair or defeat the court's administration of the *res.* If, however, the second suit does not interfere with control over the *res,* it will not be enjoined. *Kline* v. *Burke Construction Co.,* 260 U. S. 226; *Guardian Trust Co.* v. *Kansas City Southern Ry. Co.,* 171 Fed. 43, 50 (C. C. A. 8, 1909).

In *Steelman, Trustee,* v. *All Continent Corporation,* 301 U. S. 278, a bankruptcy court in New Jersey, administering the bankrupt estate of William Fox, entered an order for examination of the All Continent Corporation because it appeared that the bankrupt had transferred his assets to that corporation to defraud his creditors. Thereafter the All Continent Corporation brought a suit in Pennsylvania to remove a cloud upon its title to certain property, naming the trustee in bankruptcy as a defendant. As the Pennsylvania suit threatened to interfere with the administration of the bankrupt estate, the New Jersey court enjoined the All Continent Corporation from proceeding further in Pennsylvania. Although the New Jersey court had not actually taken possession of the *res,* the Pennsylvania suit would have interfered with its examination of the All Continent Corporation to determine whether it should take possession of its assets. In sustaining the right of the New Jersey

court "to prevent the defeat or impairment" of its jurisdiction, this Court said (p. 285):

> All Continent Corporation, if there is truth in the charges made by the trustee, is a party to a conspiracy to cover up the bankrupt's assets and keep them from his creditors. In that view of the facts, the suit in Pennsylvania will be a step in fulfilling the conspiracy, and may even crown it with success. The inquiry into the fraud, an inquiry going forward in orderly fashion under the supervision of the court of bankruptcy, will be transferred to another jurisdiction with the supposed fraudulent grantee as *dominus litis*. In such a suit there is danger that the issues to be tried may be so narrowly restricted as to shut out the light.

Continental Bank v. *Rock Island Railway*, 294 U. S. 648, did not involve an injunction against prosecution of a suit, but the case illustrates the circumstances under which a court may enjoin other acts which interfere with the exercise of its jurisdiction over the assets of a corporation. The court's jurisdiction having been invoked for the purpose of reorganizing a railroad under Section 77 of the Bankruptcy Act, it enjoined banks holding outstanding notes from selling collateral securing the notes, because the sale of the collateral "would seriously embarrass and probably prevent the formulation and consummation of a plan of reorganization" (p. 678). This Court pointed out

that a bankruptcy court is essentially a court of equity which has the inherent power "to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction" (p. 675).

The necessity for enjoining a second suit which threatens to interfere with a *res* and the limitations upon that principle were explained in *Kline* v. *Burke Construction Co.*, 260 U. S. 226, 229, 230:

> Where the action is *in rem* the effect is to draw to the federal court the possession or control, actual or potential, of the *res*, and the exercise by the state court of jurisdiction over the same *res* necessarily impairs, and may defeat, the jurisdiction of the federal court already attached.
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> But a controversy is not a thing, and a *controversy over a mere question of personal liability* does not involve the possession or control of a thing, and an action brought to enforce such a liability *does not tend to impair or defeat the jurisdiction of the court* in which a prior action for the same cause is pending. Each court is free to proceed in its own way and in its own time, without reference to the proceedings in the other court. Whenever a judgment is rendered in one of the courts and pleaded in the other, the effect of that judgment is to be determined by the application of the principles of *res adjudicata* by the court in which the action is still pending in the orderly exercise of its jurisdiction, as it would determine

> any other question of fact or law arising in the progress of the case. The rule, therefore, has become generally established that where the action first brought is *in personam* and seeks only a personal judgment, another action for the same cause in another jurisdiction is not precluded. [Italics supplied.]

The Court quoted with approval from *Baltimore & Ohio R. R. Co.* v. *Wabash R. R. Co.*, 119 Fed. 678, 680, as follows (pp. 231–232):

> The rule is not limited to cases where property has actually been seized under judicial process before a second suit is instituted in another court, but it applies as well where suits are brought to enforce liens against specific property, to marshal assets, administer trusts, or liquidate insolvent estates, and in all suits of a like nature. * * * The rule is limited to actions which deal either actually or potentially with specific property or objects. Where a suit is strictly *in personam,* in which nothing more than a personal judgment is sought, there is no objection to a subsequent action in another jurisdiction, either before or after judgment, although the same issues are to be tried and determined; and this because it neither ousts the jurisdiction of the court in which the first suit was brought, nor does it delay or obstruct the exercise of that jurisdiction, nor lead to a conflict of authority where each court acts in accordance with law. *Stanton* v. *Embrey,* 93 U. S. 548.

The prohibitions of the 1912 consent decree dealt merely with the "personal liability" of the Aluminum Company, and did not "involve the possession or control of a thing." The 1912 suit was not "brought to enforce liens against specific property, to marshal assets, administer trusts, or liquidate insolvent estates" or to dispose of any *res* "of a like nature." The New York suit, therefore, "does not tend to impair or defeat the jurisdiction" of the Pennsylvania court over any *res* or "lead to a conflict."

It is true that the New York petition contemplates administration of a *res* in connection with its prayer for dissolution of the Aluminum Company and appointment of a receiver for its properties to effectuate dissolution. It does not follow, however, that there will be conflicting jurisdiction over the *res,* because that *res* was not before the Pennsylvania court when it canceled restrictive covenants and prohibited monopolistic practices.[5]

2. CASES IN WHICH THE DEFEATED LITIGANT SEEKS TO RELITIGATE IN A SECOND COURT

After a litigant has been defeated in one court, he may be enjoined from attacking the decree against him by seeking to relitigate the issue in a

[5] This fundamental distinction between the two suits emphasizes the fact that the subject matter of the New York suit is substantially different from that disposed of in the 1912 suit.

second court. In *Kessler* v. *Eldred,* 206 U. S. 285, Eldred had sued Kessler in Illinois for infringement of his electric lamp lighter patent, and after his bill had been dismissed on the merits, he instituted a second infringement suit against Kessler's customer in a New York court. After assuming the defense on behalf of his customer, Kessler obtained an injunction in the Illinois court restraining Eldred from prosecuting his second suit. This Court upheld the injunction, pointing out (p. 290) that such suits by the defeated party would result in the "impairment or destruction" of the prevailing party's judgment right.[6]

The suit enjoined in *Toledo Scale Co.* v. *Computing Scale Co.,* 261 U. S. 399, 426, sought to restrain enforcement of a judgment obtained in an earlier suit.

Looney v. *Eastern Texas R. R. Co.,* 247 U. S. 214, cited in appellant's brief (p. 36), illustrates the general rule that the court first acquiring jurisdiction may enjoin a party from seeking a conflicting adjudication in another court. The

[6] In *Frink Co.* v. *Erikson,* 20 F. (2d) 707, 712 (C. C. A. 1, 1927), the court, distinguishing the *Kessler* case, refused to enjoin a suit for infringement of a reissue patent after the patent holder had lost an earlier suit for infringement of the original patent, because although the issues were very similar, the second suit required "a determination of other questions than the mere validity or invalidity of the original patent."

Interstate Commerce Commission had prescribed certain railroad rates for traffic moving in Texas, and its power to prescribe such intrastate rates had been approved by this Court in the *"Shreveport Case."* The railroads obtained a preliminary injunction in a federal court against the state attorney general who was threatening to bring penalty suits against the railroads for complying with the Commission's order. Thereafter the state attorney general instituted a suit in a state court to enjoin the railroads from complying with the Commission's order. The federal court then enjoined the attorney general from proceeding further in the state court. The maintenance of the proceeding in the state court not only tended to defeat the jurisdiction of the federal court but also threatened to subject the railroads to conflicting orders. The subject matter over which the federal court had jurisdiction was being actively litigated when the attorney general instituted the state proceeding, and the injunction against the latter proceeding was proper and necessary to prevent a "conflict" and "for the purpose of protecting and preserving that jurisdiction until the object of the suit" was accomplished (p. 221). It being impossible to comply with both the Commission's order and the order sought by the attorney general, the federal court could not protect its jurisdiction without enjoining the proceedings in the state court.

In *Trees* v. *Glenn*, 319 Pa. 487, 490, cited in appellant's brief (p. 43), Glenn originally had filed a suit to require Trees to make an accounting for the sale of property. After an adjudication against him, Glenn filed a second suit in another court to relitigate one of the issues disposed of in the first suit. It was held that the first court properly enjoined the defeated plaintiff from prosecuting a second suit, because the issue raised had been determined against him and the suit was therefore an attempt to relitigate and was "clearly vexatious."

As United States was not the defeated party in the 1912 suit, there is no occasion for it to relitigate any issues adjudicated against it in the first suit or to deprive a successful opponent of the benefits of a judgment in its favor. The consent decree is *against* Aluminum Company, requiring it to cancel restrictive covenants in five contracts and enjoining it from engaging in certain unfair and monopolistic practices. Aluminum Company did not and could not obtain relief against the United States in that suit;[7] it was the unsuccessful defendant and acquired no rights under the consent decree. Because no rights were acquired there are no rights which can be defeated by the New York suit.

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[7] The United States may not be sued without its consent, *Cohens* v. *Virginia*, 6 Wheat. 264, and this immunity extends to cross-bills and ancillary suits as well as original suits. *Illinois Central Railroad Co.* v. *Public Utilities Comm.*, 245 U. S. 493, 504–505; *De Groot* v. *United States*, 5 Wall. 419, 431.

3. CASES IN WHICH A PARTY DURING ACTIVE LITIGATION INSTITUTES VEXATIOUS SUITS TO RELITIGATE ISSUES PENDING IN THE FIRST COURT

Such cases are illustrated by *Georgia Power Co.* v. *Tennessee Valley Authority,* 89 F. (2d) 218 (C. C. A. 5, 1937; cert. den. Oct. 11, 1937), relied upon in appellant's brief (pp. 40–42). There the Georgia Power Company had instituted a suit in Georgia to enjoin the Tennessee Valley Authority from constructing a transmission line on the ground that the Act creating the Authority was unconstitutional. On May 28, 1936, the Georgia court entered an order denying Georgia Power Company's application for a preliminary injunction. On the very next day the Georgia Power Company, together with 18 other power companies, filed two suits seeking substantially identical relief in Tennessee and Alabama. The Tennessee court granted substantially the preliminary injunction which had been refused by the Georgia court. The Georgia court then enjoined the Georgia Power Company from enforcing its preliminary injunction in Georgia or from continuing the proceedings in Tennessee in so far as they might conflict with the rights acquired by the Authority under the order of the Georgia court. Not only was the Tennessee suit grossly vexatious, but, as pointed out by the Circuit Court of Appeals (p. 220), the preliminary injunction obtained from the Tennessee court "had the effect of overruling the order of the

federal court in Georgia, entered on May 28, 1936, and substantially granted the temporary relief denied in that suit.[4] After a preliminary defeat in the Georgia court it was manifestly inequitable for the Georgia Power Company to relitigate the issue in another court and thereby seek to reverse the action of the Georgia court where the litigation was actively pending.

Appellant's brief (p. 42) relies upon *Alabama Power Co.* v. *Tennessee Valley Authority* (N. D. Ala.), in which the Alabama court on April 15, 1937, enjoined Alabama Power Company from participating with 18 other power companies in a suit against the Tennessee Valley Authority in Tennessee on the ground that the suit sought to relitigate the issues passed upon in *Ashwander et al.* v. *Tennessee Valley Authority et al.*, 297 U. S. 288. Since the filing of appellant's brief the Circuit Court of Appeals[5] has reversed the district court (C. C. A. 5, No. 8469, opinion filed Oct. 19, 1937), holding that the Tennessee suit presented new issues not involved in the *Ashwander* case, *supra,* and that the Alabama court therefore abused its discretion in enjoining prosecution of the Tennessee suit. The court pointed out that the Tennessee Valley Authority could urge its plea of

[5] It may be noted that this is the same Circuit Court of Appeals which sustained the injunction issued by the Georgia court in *Georgia Power Co.* v. *Tennessee Valley Authority*, 89 F. (2d) 218.

res judicata in the Tennessee court and "have the full benefit of it in that case."

Iron Mountain R. Co. v. *Memphis,* 96 Fed. 113, 131 (C. C. A. 6, 1899), resembles the *Georgia Power* case, *supra,* in that one of the parties to an actively pending suit sought to relitigate the issues by instituting suit in a second court. The Iron Mountain Railroad Company filed the first suit in a federal court to enjoin the City of Memphis from attempting to enforce a forfeiture of a contract whereby the railroad was given the right to occupy a city street on condition that it would charge nondiscriminatory rates. Thereafter the City of Memphis instituted an ejectment suit in a state court. The railroad then sought an injunction from the federal court to restrain the city from prosecuting the state case. The injunction was refused, but the Circuit Court of Appeals properly held that it should have been granted to prevent impairment of the jurisdiction of the court before which the litigation was actively pending.[9]

[9] The rule that a court actively engaged in litigation will enjoin one of the litigants before it from filing identical suits in other courts is illustrated in *Higgins* v. *California Prune & Apricot Growers,* 282 Fed. 550, 557 (C. C. A. 2, 1922), where a federal court in New York, whose jurisdiction had been invoked by a California company, enjoined the company from maintaining three identical suits subsequently filed against the same defendant in three different California courts, "the very evident and sole purpose" being "to vex, annoy, and harass the defendants."

It is evident that the New York suit against the Aluminum Company and 62 other defendants does not represent a multiplicity of suits initiated by the United States to harass the Aluminum Company or to relitigate any issues awaiting determination in the Pennsylvania court. Although the 1912 suit is still alive in the sense that the consent decree is perpetual and may be enforced and revised, active litigation was terminated 25 years before the New York suit was filed. The consent decree was filed on June 7, 1912, three weeks after the initiation of the suit, and without submitting any contested issues to the determination of the court (R. 1). It would require much more than a mere showing that Aluminum Company, its subsidiaries, officers and directors have been included among 63 defendants in an antitrust case a quarter of a century later to demonstrate that the United States has resorted to a multiplicity of suits for the purpose of vexing or harassing the company.

An examination of the pleadings in the two cases shows that the New York suit is brought in the public interest, that it does not attack the consent decree or seek to relitigate any issues adjudicated against the United States, and that its purpose is not to annoy or harass Aluminum Company.

The ultimate object of the New York suit, like that of the consent decree, is to enforce compliance

with the antitrust laws. The vital difference is that the New York suit is directed to a new offense, attacks a greater monopoly, and seeks far more drastic relief, including dissolution of the Aluminum Company.

III

APPELLANT HAS SHOWN NO CAUSE FOR INTERVENTION OF A COURT OF EQUITY TO RESTRAIN PROSECUTION OF THE NEW YORK SUIT

A. NO IRREPARABLE INJURY WILL BE SUFFERED AS A RESULT OF THE MAINTENANCE OF THE NEW YORK SUIT

Injunctive relief is not to be granted as a matter of course. *Harrisonville* v. *Dickey Clay Co.*, 289 U. S. 334, 337–338. It must be predicated upon a showing of imminent irreparable injury. See *Boise Artesian Water Co.* v. *Boise City*, 213 U. S. 276; *Cavanaugh* v. *Looney*, 248 U. S. 453; *Cruickshank* v. *Bidwell*, 176 U. S. 73.

Appellant's petition rested its claim of irreparable injury upon (1) the inconvenience in defending the suit in New York, and (2) the peril of being subjected to two decrees at the same time covering the identical subject matter (R. 88–90).

In support of its first contention the secretary of the Aluminum Company testified at the final hearing that its active records are kept at its principal office in Pittsburgh and that other records are kept in storage vaults at New Kensington, 18 miles from Pittsburgh (R. 227). He asserted that if the New York suit is prosecuted, the company will

be hampered in its business by the removal of records to New York and by the absence from Pittsburgh of such employees as will be needed for the preparation of its defense (R. 227–228).

Appellant's application for a preliminary injunction was based largely upon its contention that although it had not yet retained New York counsel, it would be obliged to do so, and they would have to file an answer, examine the books and records of the company, and investigate its history from 1902 to 1937 (R. 89, 215, 217). It became apparent, however, at the final hearing on June 23, 1937, that New York counsel had been actually retained on May 12, 1937 (R. 255), two days before issuance of the preliminary injunction (R. 141), that 46 separate answers, including that of Aluminum Company, had been filed in the New York case on June 17, 1937 (R. 253–255, 269–324), that no application had been made to the New York court for an extension of time to answer (R. 259), and that New York counsel had not found it necessary to examine the books and records of the Aluminum Company before filing the answers (R. 248).

Any irreparable injury involved in retaining New York counsel and filing answers has already been suffered. It is fundamental that equity will not enjoin an injury which has already occurred. *Lacassagne* v. *Chapuis,* 144 U. S. 119, 124.

In view of the fact that Aluminum Company writes or receives about 1,250,000 letters per year

and has an accumulation of millions of documents (R. 227, 248), there is no likelihood that the production of a comparatively few letters and other records dealing with restraint of trade and monopoly will seriously hamper the legitimate operations of Aluminum Company. It is apparent that the operating offices of the company have not hitherto been hampered by the absence of their old books and records, because the secretary of the company admitted that the subsidiaries located in New York periodically ship their old records to the storage vault at New Kensington, Pennsylvania, 400 miles away from the operating offices in New York (R. 229). Moreover, as stated in the court's findings, there is no assurance that the Expedition Court would sit in Pittsburgh, "and it is therefore probable that Aluminum Company might suffer substantially the same inconvenience in defending such a proceeding in the 1912 suit as it will suffer in defending the suit in New York" (R. 177).

The inconvenience which appellant may encounter in defending the New York suit does not constitute such irreparable injury as to justify the intervention of a court of equity. Indeed, appellant, cognizant of the manifest insufficiency of this ground, places but little reliance upon it (Brief, pp. 30–31). As the Expedition Court stated in its opinion, "if the fact that it may be necessary for a defendant to retain counsel and prepare a de-

fense amounts to irreparable harm, such as to justify relief by injunction, then an injunction would be available to any defendant in any suit" (R. 185).

Appellant makes no contention that it is faced with a multiplicity of suits such as that which provided the basis for the issuance of an injunction in *Kessler* v. *Eldred,* 206 U. S. 285, 289–290, *supra.* Its brief inferentially suggests (p. 31) that the New York suit is vexatious and its petition asserts that the United States has no right to "harass" it by requiring it to defend in New York (R. 89). There is no allegation of fact to support the contention that the New York suit is vexatious or intended to harass appellant, and no evidence was offered to that effect. The most that is shown is a slight inconvenience in being required to stand trial in another district (R. 227–228). In the absence of a scintilla of evidence to the contrary, this Court will presume that the Attorney General in instituting the New York suit acted in good faith and in the public interest. *United States* v. *Chemical Foundation, Inc.,* 272 U. S. 1; *Arthur* v. *Unkart,* 96 U. S. 118.

B. APPELLANT HAS AN ADEQUATE REMEDY IN THE NEW YORK SUIT

Appellant rests its claim for injunctive relief upon the alleged identity between the New York suit and the Pennsylvania suit (R. 80; Brief, pp. 12–22). After an elaborate examination of the

allegations and prayer for relief in the two suits, it concludes that "each paragraph in the New York petition which purports to charge a violation of law deals with a charge which, if true, * * * is enjoined by specific paragraphs of the Pennsylvania decree" (Brief, p. 22). In apparent recognition of the weakness of this assertion, appellant urges its right to injunctive relief upon a broader principle than that of *res judicata* (Brief, p. 35).

The allegation in appellant's petition that it is without adequate remedy at law and that its interests can be protected only by a court of equity (R. 90) ignores the fact that the New York suit is one in equity, in which defendants' interests are to be carefully considered. See *Wilson* v. *Shaw*, 204 U. S. 24, 31. An injunction will be issued to restrain equity proceedings only where it is clearly shown that full and adequate relief cannot be secured in the pending equity suit. *American Seeding Mach. Co.* v. *Dowagiac Mfg. Co.*, 241 Fed. 875, 877 (C. C. A. 6, 1917); *Frink Co.* v. *Erikson*, 20 F. (2d) 707, 712 (C. C. A. 1, 1927).

If appellant is correct in its claim that there is such identity between the two cases as to bar prosecution of the New York suit, it may assert this defense in the New York court. That court is in a better position to determine any issue of *res judicata* in a suit pending before it than is the Pennsylvania court. It could give appellant whatever protection is required by reason of the alleged

identity of the suits. The prosecution of the New York suit may be prevented quite as effectively by its dismissal as it can by an injunction issued by the Pennsylvania court.

The interposition of such a defense in the New York suit would involve no more inconvenience to appellant than it has already experienced in the proceedings before the Pennsylvania court upon its petition for injunction. Under Equity Rule 29 this defense could be tried before the trial on the merits. Appellant would not be required to bring to New York any of its books or records. A certified copy of the Pennsylvania petition and decree would suffice. Upon establishment of its claim, appellant would escape whatever injury it might suffer by reason of the production of its records in a trial of the New York suit on the merits.

Having this remedy available in the New York suit, it is significant that appellant has filed an answer to the New York petition without raising before the New York court any question of *res judicata,* estoppel or identity of the suits (R. 269–322).

C. THE PROBABILITY OF TWO HARMONIOUS DECREES AFFORDS NO GROUND FOR ENJOINING THE NEW YORK SUIT

In its petition appellant alleged that the New York suit subjected it to "the peril of two decrees existing at the same time in two separate and independent courts affecting the same subject matter and issues" (R. 88–89). In its brief this is urged as a ground for injunctive relief (pp. 11, 28, 45).

If, as appellant assumes (Brief, pp. 28–29), the New York court should "enter an injunction order comparable in scope to the Pennsylvania decree", it does not follow that appellant would be irreparably injured. If the consent decree is as sweeping in its scope as appellant contends, condemning every practice challenged by the New York petition and enjoining every conceivable combination or agreement (Brief, pp. 14, 19, 22), it would follow that appellant is in no danger of being subjected to the peril of a second decree broader than the 1912 decree.

As it has been shown in Point II, *supra,* there is no probability of conflict between the two decrees. Both are intended to compel obedience to the Sherman Act, and the affirmative injunctive provisions sought are harmonious. The only difference lies in the fact that the New York petition seeks more drastic relief.

Appellant's assertion that it is entitled to "rely" upon the consent decree until the need for further relief is shown (Brief, p. 29) ignores the fact that the New York petition constitutes an offer to make just such a showing in a trial upon the merits.

D. AN INJUNCTION AGAINST PROSECUTION OF THE NEW YORK SUIT WOULD DEFEAT THE STATUTORY RIGHT AND DUTY OF THE UNITED STATES TO ENFORCE THE SHERMAN ACT

Appellant contends that the issuance of an injunction to restrain prosecution of the New York suit will involve "no countervailing hardship upon

the United States" because it may enforce the Pennsylvania consent decree by contempt proceedings, or it may file a supplemental bill in the Pennsylvania court seeking the dissolution of appellant (Brief, p. 31). Neither of these alternatives affords the United States an adequate method for enforcement of the Sherman Act.

It is doubtful whether the United States could, by a supplemental petition filed in the 1912 suit, secure the relief prayed for in the New York petition. As recognized by the court below, the United States seeks dissolution of appellant on the ground that its 90 to 100 per cent monopoly, "regardless of the devices used to perpetuate the monopoly", is a violation of the Sherman Act (R. 133–134, 184). The decree in the 1912 suit was entered on the explicit assumption that the monopoly *per se* was not a violation of the Sherman Act (R. 72). The decision of this Court in *United States* v. *International Harvester Co.*, 274 U. S. 693, might be regarded as raising doubt whether the more drastic relief sought in the New York suit could be secured by a supplemental bill. In that case the United States had filed suit under the Sherman Act against the International Harvester Company in 1912 seeking dissolution of that company. A consent decree which was entered provided that the defendant should sell certain of its lines of machines in order to restore competitive conditions in the industry. Unlike the consent decree in the present case, it reserved to the

court jurisdiction to grant such further relief to the United States as might prove necessary to effectuate its purpose. In 1923 the United States filed a supplemental petition alleging that the decree had been inadequate to accomplish its declared purpose and seeking the division of the assets of the company among three independent corporations. In affirming the dismissal of the supplemental petition this Court rejected the contention that the decree was intended to restore competitive conditions as they existed before the formation of the company in 1902, saying (p. 702) that "this is entirely inconsistent with the purpose of the consent decree, both as appears from its terms and as it was apparently construed by the District Court itself." In the present case the relief sought in the New York suit is manifestly broader in scope than that which was envisioned by the Pennsylvania court in entering the consent decree.

Even if the scope of the 1912 decree were broad enough to encompass the relief sought in the New York petition, the acts alleged to have occurred subsequent to 1912 would have to be established in a trial upon the merits before the Pennsylvania court. New evidence would be required to demonstrate the right of the United States to the drastic relief sought. The result would be in fact, if not in form, an entirely new antitrust suit against appellant and the 62 other defendants named in the New York petition.

The new suit has so little in common with the old that even if relief were sought in Pennsylvania, a new petition would be more appropriate than a supplemental petition in the 1912 proceeding. It is doubtful whether a supplemental petition alleging the existence of a monopoly *per se* and seeking dissolution of Aluminum Company and comprehensive injunctive relief against 63 alleged conspirators would be proper in view of the limited scope of the original petition.

Whatever may be the status of appellant's wholly owned subsidiaries, its officers, directors, and former directors, it is clear that the 23 other defendants named in the New York petition are not bound by the terms of the 1912 decree. The United States cannot prosecute them for contempt of that decree. Appellant concedes that it "does *not* challenge the right of the Government to bring and maintain a suit against any of the *other* defendants in New York or elsewhere" (Brief, pp. 11, 23). In other words, the government may prosecute 23 of the defendants in New York and 40 of them in Pennsylvania. The subject matter of the New York suit would not lend itself to such a division, especially in so far as it relates to dissolution of Aluminum Company. Hopeless confusion would result if the New York court were to grant the relief sought as to 23 defendants and the Pennsylvania court simultaneously were to grant the relief as to the remaining 40 defendants.

Furthermore, a division of the subject matter of the 1937 suit into two suits would be in conflict with the congressional policy indicated by Section 5 of the Sherman Act and Section 12 of the Clayton Act (U. S. C., Tit. 15, Secs. 5, 22), whereby "other parties" to a monopoly, combination, or conspiracy may be brought before the court from other districts in the interest of enabling the government to proceed against all members of a combination in a single suit.[10]

Under these provisions the United States is entitled to lay the venue in any district where any one of the defendants resides, is found, or transacts substantial business. *Standard Oil Co.* v. *United States,* 221 U. S. 1; *Eastman Co.* v. *Southern Photo Co.,* 273 U. S. 359, 372–373.[11] Manifestly appel-

[10] See explanation of Section 5 of the Sherman Act by Representative Culbertson, sponsor of the Act, 21 Cong. Rec., pt. 5, p. 4090, 51st Cong., 1st Sess.; pt. 3, pp. 2640–2642.

[11] The New York venue is amply established. A number of the corporate defendants named in the New York suit are inhabitants of, or found in, or transact business in the Southern District of New York (Finding 12, R. 177). In its answer in the New York suit appellant has admitted that four of the defendant corporations are incorporated under the laws of New York (R. 274–275) and that three maintain offices in New York City (R. 270, 274–275). Thus appellant, the principal defendant in the suit, maintains a sales office in New York City (R. 218, 270), and defendant, The Republic Mining and Manufacturing Co., a 100 per cent subsidiary which is alleged to own or hold more than 90 per cent of the bauxite deposits in the United States commercially suitable for the production of aluminum (R. 106), also maintains an office in New York City (R. 218, 274).

lant must make a strong showing to establish its right to relief which has the effect of denying important procedural rights to the United States. No such showing of equities in its favor has been made. Since it has been demonstrated that no such relief is necessary to protect the jurisdiction and decree of the Pennsylvania court, and that appellant is in no peril of conflicting decrees, its assertion of equity is reduced to the tenuous proposition that it will suffer some inconvenience as the result of the government's choice of the New York venue. Bearing in mind that a number of other defendants in the New York suit may find it more convenient to defend in New York than in Pittsburgh, it is submitted that a balancing of conveniences does not favor the issuance of the injunction sought by appellant.

The United States is not bound by precedent, as appellant insists (Brief, p. 33), to proceed against appellant in the Pennsylvania court in all monopoly cases merely because the 1912 antitrust suit was brought in that court. It has never been the practice of the government to proceed by supplemental petition in an antitrust case where there are new defendants and a new cause of action. In

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Moreover, it has been judicially determined that defendant Aluminium Limited, a Canadian corporation which is one of the principal defendants in the suit, is "found" in New York City. *United States* v. *Aluminum Co., of America*, 20 F. Supp. 13 (D. C. S. D. N. Y., 1937).

a number of instances antitrust suits have been instituted against parties bound by the terms of earlier decrees issued by other courts relating to violations similar in nature to those charged in the later suits. Thus, a decree entered on May 26, 1903, against certain meat packers (*Swift & Co.* v. *United States,* 196 U. S. 375; Decrees and Judgments,[12] p. 63) was followed by the entry of a later decree of February 27, 1920, in another court, although both decrees were directed at related practices of the same defendants (*Swift & Co.* v. *United States,* 276 U. S. 311; *United States* v. *Swift & Co.,* 286 U. S. 106). Likewise, the decree of July 29, 1911, entered upon the mandate of this Court against the Standard Oil Company (*Standard Oil Co.* v. *United States,* 221 U. S. 1; Decrees and Judgments, p. 136) was followed by the institution of a later suit in another court on June 25, 1924, in which similar charges were embodied (*United States* v. *Standard Oil Co.,* 33 F. (2d) 617; reversed on other grounds in *Standard Oil Co.* v. *United States,* 283 U. S. 163). Subsequent to the entry of the decree of June 7, 1897, against the Trans-Missouri Freight Association (*United States* v. *Trans-Missouri Freight Association,* 166 U. S. 290; Decrees and Judgments, p. 6) a different court granted a temporary injunction on May 31, 1910, although matters related to the original decree

[12] Decrees and Judgments in Federal Antitrust Cases, Government Printing Office, Washington, D. C., 1918.

were involved (Decrees and Judgments, p. 243). After the entry of the final decree of March 31, 1919, involved in *United States* v. *Corn Products Refining Co.*, 234 Fed. 964 (D. C. S. D. N. Y., 1916) a later decree affecting some of the same defendants was entered in *United States* v. *Corn Derivatives Institute, et al.* (N. D. Ill., Eq. No. 11634, Apr. 6, 1932).

If there is merit in appellant's contention that a defendant once enjoined by an antitrust consent decree may not be prosecuted in another court on subsequent monopoly charges, the government would be blocked from instituting comprehensive antitrust suits in many major industries. Thus, if one of the 63 defendants in the New York suit could show that it is already subject to an antitrust decree in New York, it could insist upon the right to stand trial there, while appellant could insist upon trial in Pennsylvania. This would defeat the government's statutory right to prosecute all parties to a conspiracy in one comprehensive suit. A consent decree might then become a guarantee against future prosecution and an instrument to perpetuate monopoly.

IV

THE EXPEDITION COURT ACQUIRED JURISDICTION TO DENY ALUMINUM COMPANY'S APPLICATION FOR PERMANENT INJUNCTION

Appellant's brief (pp. 46–57) presents an extended argument in support of its contention that

government counsel, served outside the district, were subject to the process of the Pennsylvania court, and that at all events their special appearance was waived by invoking the Expedition Court (p. 52). The special appearance was overruled after a preliminary hearing before the district judge (R. 153). Government counsel expressly reserved all rights under their special appearance in participating in the hearing on the preliminary injunction (R. 210), in subsequently filing their answer (R. 154), and in filing the expediting certificate (R. 159–160).

The Expedition Court refrained from any discussion of the court's power to serve process outside the district, explaining:

> We could make a preliminary determination as to whether service of process upon government counsel outside the Western District of Pennsylvania is void, but deem it of paramount importance to determine the controversy upon its merits rather than upon questions of practice and procedure (R. 183).

Although appellant assigned as error the conclusion that the Expediting Act and the Attorney General's certificate conferred jurisdiction upon the Expedition Court (R. 193, 203–205), its brief (p. 34) concedes that the filing of the expediting certificate permanently removed future proceedings in the Pennsylvania suit to the Expedition Court. In view of appellant's apparent waiver of

this assignment, it will not be necessary to discuss at length the basis for the court's jurisdiction.

The jurisdiction of the Expedition Court is based upon Section 1 of the Expediting Act, which provides:

> That in any suit in equity pending or hereafter brought in any circuit court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said court, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select; or, in case the full court shall not at any time be made up by reason of the necessary ab-

> sence or disqualification of one or more of the said circuit judges, the justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. * * * The provisions of this section shall apply to all causes and proceedings in all courts now pending, or which may hereafter be brought. (Act of February 11, 1903, c. 544, 32 Stat. 823; U. S. C., Tit. 15, Sec. 28.)

The creation of an Expedition Court is mandatory upon the filing of the Attorney General's certificate that the case is one of "general public importance." *Ex parte United States,* 226 U. S. 420, 424. The Act applies to "all causes and proceedings", and upon the filing of the certificate the Expedition Court acquired jurisdiction to determine all matters which were then before the single judge who had granted the preliminary injunction. The language of the Act bears no indication of any congressional intent that the jurisdiction of the special court should be conditioned upon the waiver of a special appearance previously filed in the district court.

The filing of an expediting certificate is merely the exercise of a statutory procedural right analogous to the right of removal of causes from state courts to federal courts, which is not dependent upon waiver of a special appearance. *Wabash Western Railway* v. *Brow,* 164 U. S. 271,

278. It is an official act by the Attorney General in his capacity as an executive officer by virtue of statutory authority vested in him, rather than in his capacity as a "party defendant" in the 1912 suit. This official act is in no way impaired by his maintenance of a special appearance.

The Expedition Court was not deprived of jurisdiction by the fact that the expediting certificate was filed long after institution of the suit in 1912. The Act does not require that the certificate be filed at the time suit is instituted. This is indicated by the provision that it shall apply to proceedings pending at the time of its enactment. Thus in the first case in which such a certificate was filed, the suit had been instituted May 10, 1902, approximately nine months before enactment of the statute. *United States* v. *Northern Securities Co.*, 120 Fed. 721, 722 (C. C. Minn., 1903), affirmed *Northern Securities Co.* v. *United States*, 193 U. S. 197.

The jurisdiction of an Expedition Court is not confined to final hearing on the merits of an antitrust suit. It applies to all proceedings, as appears to be recognized in appellant's brief (p. 34). Once an expediting certificate has been filed in an antitrust suit, an Expedition Court may be called upon after the case has been litigated on its merits to enter a decree upon mandate of the appellate court. *Ex parte United States*, 226 U. S. 420. Section 2 of the Act, which follows the language of Section 1 and provides for direct appeal to this

Court from a "final decree", has been held to apply to a motion to vacate an antitrust consent decree. *Swift & Co.* v. *United States,* 276 U. S. 311. Likewise an appeal from an order denying a petition to intervene after entry of a consent decree in an antitrust suit can be taken only under Section 2 of the Expediting Act. *United States* v. *California Cooperative Canneries,* 279 U. S. 553, 557–558.

It is clear, therefore, that the Expedition Court acquired jurisdiction over the issues raised by Aluminum Company's ancillary petition filed in the 1912 suit, and that it was not deprived of jurisdiction by the reservation of the special appearance.

CONCLUSION

For the foregoing reasons the decree of the specially constituted Expedition Court for the Western District of Pensylvania should be affirmed.

Respectfully submitted,

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November 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1937

SUPREME COURT OF THE UNITED STATES.

No. 281.—October Term, 1937.

Aluminum Company of America, Appellant, *vs.* The United States of America.	Appeal from the District Court of the United States for the Western District of Pennsylvania.

[December 6, 1937.]

Mr. Justice McReynolds delivered the opinion of the Court.

This appeal brings up a final decree of the District Court, Western District of Pennsylvania, three judges sitting, which vacated a preliminary injunction and refused to restrain law officers of the United States from conducting a proceeding against appellant in another district.

June 9, 1912, in the present cause—"Pennsylvania Suit"—when appellant was the only defendant, a consent decree cancelled certain restrictive provisions of designated contracts and forbade future violations of the anti-trust laws by it, its officers, agents and representatives. With certain modifications (1922) presently unimportant this decree remains in force.

April 23, 1937, the United States through their law officers, defendants here, instituted a proceeding in the Southern District of New York—"New York Suit"—wherein the appellant, its officers, agents, stockholders and others (sixty-three in all), were named as defendants. All of these were charged with violating the anti-trust laws and appropriate relief through injunctions, dissolution of appellant, rearrangement of its properties, etc., was asked.

April 29, 1937, in the "Pennsylvania Suit" appellant asked and the District Court entered an ex parte order directing the law officers concerned with the New York suit to appear as defendants. It then filed the petition now before us wherein it prayed for an injunction restraining these officers from proceeding further in New York against it, its wholly owned subsidiaries, officers and directors.

The petition charged that prosecution of the later suit would subject appellant to the peril of concurrent decrees on the same subject matter by two courts; also that there was the possibility of conflicting decrees and unseemly conflict. The prayer for relief rested essentially upon the assertion that the suit embraced subject mat-

ters and issues substantially identical with those previously presented and adjudicated by the consent decree of 1912.

The law officers appeared specially and answered; the Attorney General filed an expediting certificate under the Act of February 11, 1903, as amended, 15 U. S. C. A. 28, 29; a court of three judges assembled, heard evidence, made findings of fact and denied relief. Errors were assigned; this appeal followed.

Plainly, and there is no suggestion to the contrary, appellant cannot succeed unless the Pennsylvania and New York suits are substantially identical in subject matter and issues. It says that comparison of the petitions in the two causes reveals this fact. Also that comparison of the petition in the later suit with the prohibitions of the 1912 consent decree shows the alleged identity, since each charging paragraph of the petition sets up violations of the anti-trust laws inhibited by the decree.

On the other hand, counsel for the United States submit that the two suits differ in substantial respects—defendants, charges and relief prayed.

The court below found: "The subject matter, parties, issues and relief sought in the New York suit differ substantially from those in the 1912 suit. The New York suit does not attack the affirmative provisions of the 1912 decree or seek to reverse any action taken by the District Court for the Western District of Pennsylvania in the suit of 1912. The New York suit does not subject Aluminum Company to the peril of two conflicting decrees. Aluminum Company will not suffer irreparable injury by being compelled to defend the suit in the Southern District of New York. . . ." It concluded that the two suits were dissimilar in respect of parties defendant, subject matter, issues and relief sought, and that no basis for an injunction had been shown.

We have heard counsel, examined the record and briefs, and are unable to say that the court below erred either in respect of its findings or conclusion. The findings are adequately supported and the conclusion reached, we think, is proper. For us again to analyze the pleadings, evidence and decrees and point out the differences and necessary inferences would serve no useful purpose. This was adequately done below.

The challenged decree must be

Affirmed.

The CHIEF Justice and Mr. Justice STONE took no part in the consideration or decision of this cause.